THE JUDICIAL CODE

OF THE

UNITED STATES

IN FORCE JANUARY 1, 1912

Act of March 3, 1911, Chap. 231, 36 Statutes at Large, 1087-1169

(Including all amendments made prior to March 4, 1913)

WASHINGTON
1913

[Senate Concurrent Resolution No. 34.]

FEBRUARY 18, 1913.

Resolved by the Senate (the House of Representatives concurring), That there be printed 30,000 copies of the Judicial Code of the United States, prepared under the direction of the Judiciary Committee of the Senate, 10,000 copies of which shall be for the use of the Senate and 20,000 copies for the use of the House of Representatives.

Attest: CHARLES G. BENNETT,
Secretary of the Senate.

Attest: SOUTH TRIMBLE,
Clerk of the House of Representatives.

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[Act of Mar. 3, 1911; 36 Stat., 1087.]

AN ACT To codify, revise, and amend the laws relating to the judiciary.

TITLE.

THE JUDICIARY.

CHAPTER ONE.

DISTRICT COURTS—ORGANIZATION.

District courts established; appointment and residence of judges.

R. S., ss. 551, 552. 26 June, 1876, 19 Stat. L., 61, c. 147, s. 1; I Supp., 106. 22 Feb., 1889, 25 Stat. L., 682, c. 180, s. 21; I Supp., 649. 3 July, 1890, 26 Stat. L., 217, c. 656, s. 16; I Supp., 767. 10 July, 1890, 26 Stat. L., 225, c. 664, s. 16; I Supp., 770. 16 July, 1894, 28 Stat. L., 110, c. 138, s. 14; II Supp., 200. 4 Feb., 1903, 32 Stat. L., 795, c. 402, s. 1. 9 Feb., 1903, 32 Stat. L., 805, c. 527. 1 Apr., 1904, 33 Stat. L., 155, c. 857. 3 Mar., 1905, 33 Stat. L., 987, c. 1418. 3 Mar., 1905, 33 Stat. L., 993, c. 1427, s. 2. 26 May, 1906, 34 Stat. L., 202, c. 2557. 16 June, 1906, 34 Stat. L., 275, c. 3335, s. 13. 25 Feb., 1907, 34 Stat. L., 928, c. 1189. 25 Feb., 1907, 34 Stat. L., 931, c. 1198. 27 Feb., 1907,

SEC. 1. In each of the districts described in chapter five, there shall be a court called a district court, for which there shall be appointed one judge, to be called a district judge; except that in the northern district of California, the northern district of Illinois, the district of Maryland, the district of Minnesota, the district of Nebraska, the district of New Jersey, the eastern district of New York, the northern and southern districts of Ohio, the district of Oregon, the eastern and western districts of Pennsylvania, and the western district of Washington, there shall be an additional district judge in each, and in the southern district of New York, three additional district judges: *Provided*, That whenever a vacancy shall occur in the office of the district judge for the district of Maryland, senior in commission, such vacancy shall not be filled, and thereafter there shall be but one district judge in said district: *Provided further*, That there shall be one judge for the eastern and western districts of South Carolina, one judge for the eastern and middle districts of Tennessee, and one judge for the northern and southern districts of Mississippi: *Provided further*, That the district judge for the middle district of Alabama shall continue as heretofore to be a district judge for the northern district thereof. Every district judge shall reside in the district or one of the districts for which he is appointed, and for offending against this provision shall be deemed guilty of a high misdemeanor. (*36 Stat. L., 1087.*)

This section states in concise language the number of judges in the respective judicial districts, and was existing law.

34 Stat. L., 997, c. 2073. 2 Mar., 1907, 34 Stat. L., 1253, c. 2575. 26 Feb., 1909, 35 Stat. L., 656, c. 215; 2 Mar., 1909, 35 Stat. L., 685, c. 242, s. 1; 2 Mar., 1909, 35 Stat. L., 686, c. 243, ss. 1, 3. 24 Feb., 1910, 36 Stat. L., 201, c. 56. 24 Feb., 1910, 36 Stat. L., 202, c. 57. 25 June, 1910, 36 Stat. L., 838, c. 410. Mo. Pac. Ry. Co. *v.* Holmes, 155 U. S., 137; Koenigsberger *v.* Richmond Silver Mining Co., 158 U. S., 41.

Sec. 297, post, p. 148, repeals "all Acts and parts of Acts authorizing the appointment of United States circuit or district judges, * * * enacted prior to February first, nineteen hundred and eleven," and Sec. 289, post, p. 146, abolished the circuit courts.

NOTE.—The notes in this volume relating to the sources of the following sections and to changes made in the law by the Judicial Code are taken substantially from the report of the Special Joint Committee on Revision and Codification of the Laws of the United States, Sixty-first Congress, second session (S. Rept. No. 388, pt. 1), section numbers being changed wherever necessary.

Salaries of district judges.

R. S., s. 554. 3 Mar., 1881, 21 Stat. L., 412, c. 130; 1 Supp., 320. 24 Feb., 1891, 26 Stat. L., 783, c. 287; 1 Supp., 896. 12 Feb., 1903, 32 Stat. L., 825, c. 547.

SEC. 2. Each of the district judges shall receive a salary of six thousand dollars a year, to be paid in monthly installments. (*36 Stat. L., 1087.*)

This section is a reenactment of a provision in the act of Feb. 12, 1903 (32 Stat. L., 825, c. 547).

Section 297, post, p. 147, repeals section 554, Revised Statutes, providing for the salaries of district judges. Traveling expenses of district judges are provided for in section 259, post, p. 133.

"The word 'salary' may be defined generally as a fixed annual or periodical payment for services, depending upon the time and not upon the amount of services." (Benedict *v.* U. S., 176 U. S., 360.)

Clerks.

R. S., s. 555.

SEC. 3. A clerk shall be appointed for each district court by the judge thereof, except in cases otherwise provided for by law. [See §§ 67, 68.] (*36 Stat. L., 1087.*)

This is a reenactment of existing law.

That the power of removal is incident to the power of appointment, see U. S. *v.* Allred, 155 U. S., 594.

Deputy clerks.

R. S., s. 558.

SEC. 4. Except as otherwise specially provided by law, the clerk of the district court for each district may, with the approval of the district judge thereof, appoint such number of deputy clerks as may be deemed necessary by such judge, who may be designated to reside and maintain offices at such places of holding court as the judge may determine. Such deputies may be removed at the pleasure of the clerk appointing them, with the concurrence of the district judge. In case of the death of the clerk, his deputy or deputies shall, unless removed, continue in office and perform the duties of the clerk, in his name, until a clerk is appointed and qualified; and for the default or misfeasances in office of any such deputy, whether in the lifetime of the clerk or after his death, the clerk and his estate and the sureties on his official bond shall be liable; and his executor or administrator shall have such remedy for any such default or misfeasances committed after his death as the clerk would be entitled to if the same had occurred in his lifetime. [See §§ 67, 68.] (*36 Stat. L., 1087.*)

Section 558, Revised Statutes, repealed by section 297, post, p. 147, authorized the judge to appoint deputy clerks, upon the application of the clerk. Congress having provided in many special cases that the clerk shall appoint the deputies, this section was so revised so as to permit the clerk to appoint the deputies, *with the approval of the district judge;* and has conferred upon the clerk the power to remove any deputy, with the concurrence of the judge.

A provision was also added that the court may designate the place at which any deputy is to reside and maintain an office.

The words "except as otherwise specially provided," at the beginning of the section, are added for the reason that in a number of the sections in chapter 5 there are provisions specially requiring deputy clerks to be appointed at certain places of holding court.

That a deputy may do every act which his principal might do, see Confiscation Cases, 20 Wall., 111. That this section does not provide for the powers and duties of deputy clerks, see U. S. *v.* Erwin, 37 Fed., 475.

Criers and bailiffs.

R. S., s. 715.
3 Mar., 1901, 31 Stat. L., 1047, c. 831.

SEC. 5. The district court for each district may appoint a crier for the court; and the marshal may appoint such number of persons, not exceeding five, as the judge may determine, to wait upon the grand and other juries, and for other necessary purposes. (*36 Stat. L., 1088.*)

This section states existing law except for the reference to the authority of circuit courts to appoint criers, in view of those courts being abolished by section 289, post, p. 146.

Records, where kept.

R. S., s. 562.
1 Comp. Dec., 313.

SEC. 6. The records of a district court shall be kept at the place where the court is held. When it is held at more than one place in any district and the place of keeping the records is not specially provided by law, they shall be kept at either of the places of holding the court which may be designated by the district judge. (*36 Stat. L., 1088.*)

This section is a reenactment of existing law.

Effect of altering terms.

R. S., s. 573.
1 Comp. Dec., 321.

SEC. 7. No action, suit, proceeding, or process in any district court shall abate or be rendered invalid by reason of any act changing the time of holding such court, but the same shall be deemed to be returnable to, pending, and triable in the terms established next after the return day thereof. (*36 Stat. L., 1088.*)

This section makes no change in existing law.

Trials not discontinued by new term.

R. S., s. 746.

SEC. 8. When the trial or hearing of any cause, civil or criminal, in a district court has been commenced and is in progress before a jury or the court, it shall not be stayed or discontinued by the arrival of the time fixed by law for another session of said court; but the court may proceed therein and bring it to a conclusion in the same manner and with the same effect as if another stated term of the court had not intervened. (*36 Stat. L., 1088.*)

The only material change made in existing law by this section consists in the omission of the words "circuit or" before the words "district court," the circuit courts being abolished by section 289, p. 146.

On the trial of an indictment, when but three jurors had been sworn before the term ended, it was held that the trial "had been commenced and was in progress." (U. S. *v.* Loughery, 13 Blatch., 267; 26 Fed. Cas., No. 15631.)

Courts always open as courts of admiralty and equity.

R. S., s. 574.

SEC. 9. The district courts, as courts of admiralty and as courts of equity, shall be deemed always open for the purpose of filing any pleading, of issuing and returning mesne and final process, and of making and directing all interlocutory motions, orders, rules, and other proceedings preparatory to the hearing, upon their merits, of all causes pending therein. Any district judge may, upon reasonable notice to the parties, make, direct, and award, at chambers or in the clerk's office, and in vacation as well as in term, all such process, commissions, orders, rules, and other proceedings, whenever the same are not grantable of course, according to the rules and practice of the court. (*36 Stat. L., 1088.*)

The words "so far as equity jurisdiction has been conferred upon them," are omitted in view of the fact that the jurisdiction of the circuit courts is transferred to the district courts by this code, chapter 2, p. 9, and sections 289, 291, page 146.

"The existence of a term does not depend upon the fact that any business is transacted thereat, nor does any general order of continuance of itself close the term." (McDowell *v.* United States, 159 U. S., 596.)

Proceedings are inoperative and void when held on a day other than that provided by law for the holding of a term of court. (McGlashan *v.* U. S., 71 Fed., 434.)

A session of the court is held whenever business is transacted by the judge between its regular terms. (Butler *v.* U. S., 87 Fed., 655.)

This section is little more than a recognition of the inherent and ancient powers of a chancellor exercising the powers of equity judges in matters of equitable cognizance. and a Federal circuit judge had authority at chambers to make an order appointing a receiver in a pending cause. (Horn *v.* Pere Marquette R. Co., 151 Fed., 626.)

See Equity Rule No. 1, November 4, 1912, 226 U. S., 649, 198 Fed. XIX.

Monthly adjournments for trial of criminal causes.

R. S., s. 578.

SEC. 10. District courts shall hold monthly adjournments of their regular terms, for the trial of criminal causes, when their business requires it to be done, in order to prevent undue expenses and delays in such cases. (*36 Stat. L., 1088.*)

This is a reenactment of existing law, no changes being made.

Special terms.

R. S., s. 581.

SEC. 11. A special term of any district court may be held at the same place where any regular term is held, or at such other place in the district as the nature of the business may require, and at such time and upon such notice as may be ordered by the district judge. Any business may be transacted at such special term which might be transacted at a regular term. (*36 Stat. L., 1088.*)

No material changes made in existing law by this section.

An order made by a district judge, in his character as such, is as valid if made by the judge at his chambers as if it were made in open court. (U. S. *v.* The Little Charles, 1 Brock., 380, 26 Fed. Cas., No. 15,613.)

The court may remit an indictment to another division for trial. (Rosencrans *v.* U. S., 165 U. S., 257.)

See also Butler *v.* U. S. (87 Fed., 655), to the effect that judges may sit in chambers for the transaction of business, and may fix the time and place for holding special terms of court.

Adjournment in case of non-attendance of judge.

R. S., s. 583, 671, 672.

SEC. 12. If the judge of any district court is unable to attend at the commencement of any regular, adjourned, or special term, or any time during such term, the court may be adjourned by the marshal, or clerk, by virtue of a written order directed to him by the judge, to the next regular term, or to any earlier day, as the order may direct. (*36 Stat. L., 1088.*)

In the district court the judge could authorize the marshal to adjourn any term of court when the judge is unable to be present. In the circuit court the clerk could adjourn court, in the absence of the marshal, upon the order of the judge. The applicable provisions of sections 583, 671, and 672, Revised Statutes, have been merged in this section, and all repealed by section 297, page 147; and it has been so modified as to permit either the clerk or the marshal to adjourn the court, upon the order of the judge; and also to adjourn the court, during a term, upon a proper order of the court.

"After the term of a court has been regularly opened upon the day provided by law, the question how long it shall remain open, to what day it shall be adjourned, and whether and how often it shall be opened for incidental business after the regular business of the term has been concluded, is a matter which rests in the discretion of the presiding judge." (U. S. *v.* Pitman, 147 U. S., 669; 45 Fed., 159.)

District judge designated to perform duties; when.

R. S., s. 591.
14 Apr., 1906, 34 Stat. L., 114, c. 1625, s. 2.
4 Mar., 1907, 34 Stat. L., 1417, c. 2940.

SEC. 13. When any district judge is prevented, by any disability, from holding any stated or appointed term of his district court, and that fact is made to appear by the certificate of the clerk, under the seal of the court, to any circuit judge of the circuit in which the district lies, or, in the absence of all the circuit judges, to the circuit justice of the circuit in which the district lies, any such circuit judge or justice may, if in his judgment the public interests so require, designate and appoint the judge of any other district in the same circuit to hold said court, and to discharge all the judicial duties of the judge so disabled, during such disability. Whenever it shall be certified by any such circuit judge or, in his absence, by the circuit justice of the circuit in which the district lies, that for any sufficient reason it is impracticable to designate and appoint a judge of another district within the circuit to perform the duties of such disabled judge, the chief justice may, if in his judgment the public interests so require, designate and appoint the judge of any district in another circuit to hold said court and to discharge all the judicial duties of the judge so disabled, during such disability. Such appointment shall be filed in the clerk's office, and entered on the minutes of the said district court, and a certified copy thereof, under the

seal of the court, shall be transmitted by the clerk to the judge so designated and appointed. (*36 Stat. L., 1089.*)

This section combines the provisions of section 591, Revised Statutes (repealed by sec. 297, p. 147), and the amendment thereto made by the act of March 4, 1907 (34 Stat. L., 1417). References to holding terms of the circuit court is omitted, for obvious reasons. The section states the existing law, changed only as required for purposes of revision. The word "any" has been substituted for the word "the" before the words circuit judge, for the reason that at present there are more than one circuit judge in a circuit, there being but one at the time of the enactment of the Revised Statutes.

Where a judge was appointed under this section to hold court in case of the disability of the district judge, and continued to hold court after the death of the disabled judge, it was held that the appointee was a judge *de facto*, if not *de jure*, and his acts as such are not open to collateral attack. (Ball *v.* U. S., 140 U. S., 118; McDowell *v.* U. S., 159 U. S., 596.)

Designation of another judge in case of accumulation of business.

R. S., s. 592.
14 Apr., 1906, 34 Stat. L., 114, c. 1625, s. 2.

SEC. 14. When, from the accumulation or urgency of business in any district court, the public interests require the designation and appointment hereinafter provided, and the fact is made to appear, by the certificate of the clerk, under the seal of the court, to any circuit judge of the circuit in which the district lies, or, in the absence of all the circuit judges, to the circuit justice of the circuit in which the district lies, such circuit judge or justice may designate and appoint the judge of any other district in the same circuit to have and exercise within the district first named the same powers that are vested in the judge thereof. Each of the said district judges may, in case of such appointment, hold separately at the same time a district court in such district, and discharge all the judicial duties of the district judge therein. (*36 Stat. L., 1089.*)

Reference to the circuit court is omitted because that court is abolished; also the provision at the end of section 592, Revised Statutes, that the judge shall not hear appeals from the district court, for the reason that no appeals now lie to the former circuit courts. The word "any" is substituted for the word "the" before the words "circuit judge," because every circuit now has two or more circuit judges.

When designations to be made by Chief Justice.

R. S., s. 593.

SEC. 15. If all the circuit judges and the circuit justice are absent from the circuit, or are unable to execute the provisions of either of the two preceding sections, or if the district judge so designated is disabled or neglects to hold the court and transact the business for which he is designated, the clerk of the district court shall certify the fact to the Chief Justice of the United States, who may thereupon designate and appoint in the manner aforesaid the judge of any district within such circuit or within any other circuit; and said appointment shall be transmitted to the clerk and be acted upon by him as directed in the preceding section. (*36 Stat. L., 1089.*)

In the first line of this section the word "all" has been substituted for the word "the;" and in line five the words "clerk of the district court" for the words "district clerk." Farther on the word "other" has been added, and the words "next contiguous," before the semicolon, have been omitted. The effect of this omission is to authorize the Chief Justice to designate *any* district judge to hold court as therein provided, instead of limiting the selection to a judge of a contiguous circuit.

New appointment and revocation.

R. S., s. 594.

SEC. 16. Any such circuit judge, or circuit justice, or the Chief Justice, as the case may be, may, from time to time, if in his judgment the public interests so require, make a new designation and appointment of any other district judge, in the manner, for the duties, and with the powers mentioned in the three preceding sections, and revoke any previous designation and appointment. (*36 Stat. L., 1089.*)

In the first line the words "any such" have been substituted for "the;" and the words "in the manner" have been added for the purpose of supplying a plain omission in the text.

Designation of district judge when public interests require.

R. S., s. 596.
3 Mar., 1881, 21 Stat. L., 454, c. 133; 1 Supp., 321.

SEC. 17. It shall be the duty of the senior circuit judge then present in the circuit, whenever in his judgment the public interest so requires, to designate and appoint, in the manner and with the powers provided in section fourteen, the district judge of any judicial district within his circuit to hold a district court in the place or in aid of any other district judge within the same circuit. (*36 Stat. L., 1089.*)

By transposing section 596, Revised Statutes, so as to precede section 595, Revised Statutes, the words "and it shall be the duty of the district judge, so designated and appointed, to hold the district or circuit (court) as aforesaid," become redundant, since the same provision is repeated in section 19. The section is so changed as to definitely impose the required duty upon the *senior* circuit judge then present in the circuit, rather than upon *any* circuit judge. This is for the purpose of avoiding confusion in making such designations.

A district judge regularly appointed by a circuit judge, under this provision, to fill a vacancy temporarily in another district is a judge *de facto* if not *de jure*, and his actions as such, so far as they affect third persons, are not open to question. (McDowell *v.* U. S., 159 U. S., 596.)

When circuit judge may be designated to hold district court.

SEC. 18. Whenever, in the judgment of the senior circuit judge of the circuit in which the district lies, or of the circuit justice assigned to such circuit, or of the Chief Justice, the public interest shall require, the said judge, or associate justice, or Chief Justice, shall designate and appoint any circuit judge of the circuit to hold said district court. (*36 Stat. L., 1089.*)

This section, in a strict sense, is new legislation. Its purpose, as explained in the general report of the committee on revision of the laws, submitted March 15, 1910, is to permit circuit judges to try cases in the district courts, in order to prevent congestion of business in those courts, and to afford business for the circuit judges in circuits in which there is not sufficient business in the circuit courts of appeals to occupy the time of the judges.

Duty of district judge in such cases.

R. S., s. 595.

SEC. 19. It shall be the duty of the district or circuit judge who is designated and appointed under either of the six preceding sections, to discharge all the judicial duties for which he is so appointed, during the time for which he is so appointed; and all the acts and proceedings in the courts held by him, or by or before him, in pursuance of said provisions, shall have the same effect and validity as if done by or before the district judge of the said district. (*36 Stat. L., 1090.*)

The words "or circuit" are inserted in the first line of the section before the word "judge;" and the words "during the continuance of such disability, or, in the case of an accumulation of business," are omitted as being redundant; and by reason of the transposition of section 596, Revised Statutes, to precede this section and the insertion of new section 18, the word "four" in the second line of the section is changed to "six." The purpose of changing the order of the sections is to avoid needless repetition of provisions.

When district judge is interested or related to parties.

R. S., s. 601.

SEC. 20. Whenever it appears that the judge of any district court is in any way concerned in interest in any suit pending therein, or has been of counsel or is a material witness for either party, or is so related to or connected with either party as to render it improper, in his opinion, for him to sit on the trial, it shall be his duty, on application by either party, to cause the fact to be entered on the records of the court; and also an order that an authenticated copy thereof shall be forthwith certified to the senior circuit judge for said circuit then present in the circuit; and thereupon such proceedings shall be had as are provided in section fourteen. (*36 Stat. L., 1090.*)

By reason of the abolishment of the circuit courts by this code, section 289, the latter part of section 601, Revised Statutes, becomes obsolete, and it is omitted. Instead of certifying the case to the circuit court, the section as revised makes it the duty of the circuit judge, senior in commission, then present in the circuit, to designate some other judge to sit in the trial of the case in which the resident judge is disqualified.

DISQUALIFICATIONS.

The fact that the district judge is a taxpayer of a county does not give him such direct pecuniary interest in the result of the suit as to disqualify him from sitting in the case. (Wade *v.* Travis County, 72 Fed., 985.)

The fact that the judge was plaintiff in a suit pending in a State court against a defendant corporation, and that his son-in-law was a party, did not disqualify him to sit in the case and issue orders which were subject to his discretion. (Coltrane *v.* Templeton, 106 Fed. 370.) But a disqualification by relationship defined in a State statute makes it improper for a judge to act, and consent of the parties does not remove the disability. (In re Eatonton Elec. Co., 120 Fed., 1010.)

"OF COUNSEL."

As to the construction of the words "of counsel," see The Richmond, (9 Fed., 863). See also Ex parte N. K. Fairbank Co. (194 Fed. 978, 987), where Judge Jones said: "The words in section 20, of the Judicial Code, 'as to render it, in his opinion, improper for him to sit on the trial,' so far as I can ascertain, have never been construed to leave it to the judge's option whether he would retire from the case if he were in truth interested in the suit, or he had been of counsel or advised as to matters involved in it, or is a material witness, or related by blood or affinity to either of the parties within the forbidden degrees at the common law; but only to leave it to his conscience and judgment to sit or not when from other causes he is 'so connected' with either party 'as to render it, in his opinion, improper for him to sit on the trial' of the case. The presumption at the common law in this respect, which has always been followed by the Federal courts, is conclusive that a judge is not a fit person to sit on the trial of a case where he is interested or his close kin or relatives are concerned, and perhaps where he has been an attorney in the case. On the other hand, in the absence of such conditions, the presumption of the rectitude of the judge in the discharge of his duties in all other situations was indisputable; and hence the objection to a judge for any other than the causes named was unknown to the Federal jurisprudence until the enactment of the Judicial Code."

When affidavit of personal bias or prejudice of judge is filed.

SEC. 21. Whenever a party to any action or proceeding, civil or criminal, shall make and file an affidavit that the judge before whom the action or proceeding is to be tried or heard has a personal bias or prejudice either against him or in favor of any opposite party to the suit, such judge shall proceed no further therein, but another judge shall be designated in the manner prescribed in the section last preceding, or chosen in the manner prescribed in section twenty-three. to hear such matter. Every such affidavit shall state the facts and the reasons for the belief that such bias or prejudice exists, and shall be filed not less than ten days before the beginning of the term of the court, or good cause shall be shown for the failure to file it within such time. No party shall be entitled in any case to file more than one such affidavit; and no such affidavit shall be filed unless accompanied by a certificate of counsel of record that such affidavit and application are made in good faith. The same proceedings shall be had when the presiding judge shall file with the clerk of the court a certificate that he deems himself unable for any reason to preside with absolute impartiality in the pending suit or action. (*36 Stat. L., 1090.*)

This section is new legislation. (See Congressional Record, 61st Cong., 3d sess., p. 2626.)

FACTS TO BE STATED.

Affidavits based upon information and belief are not sufficient to disqualify a judge under this section. "The affidavit or affidavits must not only state facts, but the facts stated must establish to the satisfaction of a reasonable mind that the judge has a bias or prejudice which will in all probability prevent him from dealing fairly with the defendant." And the affidavit must contain the certificate of good faith of a "counsel of record." The mere filing of an affidavit does not disqualify a judge where the facts stated show as a matter of law that no prejudice exists. (Ex parte N. K. Fairbank Co., 194 Fed., 978.) The section does not authorize the filing of an affidavit after trial and verdict, so as to prevent the judge from concluding the case and ruling upon the motion in arrest and for a new trial. (Ex parte Glasgow, 195 Fed., 780.)

Continuance in case of vacancy in office.

R. S., s. s. 602, 603.

SEC. 22. When the office of judge of any district court becomes vacant, all process, pleadings, and proceedings pending before such court shall, if necessary, be continued by the clerk thereof until such time as a judge shall be appointed, or designated, to hold such court; and the judge so designated, while holding such court, shall possess the powers conferred by, and be subject to the provisions contained in, section nineteen. (*36 Stat. L., 1090.*)

This section is a reenactment of existing law, except for some changes required for purposes of revision.

This section is a remedial statute, and has been held to apply to both civil and criminal causes. "The general purpose is that the administration of justice by a district court shall not, through a vacancy in the office of judge, be defeated or unduly impeded; that causes, civil and criminal, shall, notwithstanding the vacancy, be preserved in their full force and vitality to be effectually proceeded in when there is a judge authorized to discharge the functions of the court; that all acts and steps calling for or serving as basis of judicial action which otherwise must or should earlier be done or taken in court in the progress of the cause shall or may be done or taken therein after the termination of the vacancy." (U. S. *v.* Murphy, 82 Fed., 893.) In the same case, "process pending before" was held to include process of which the object has not been fully accomplished, and to include imprisonment under a commitment by a commissioner to answer a criminal charge.

Districts having more than one judge; division of business.

27 Feb., 1907, 34 Stat. L., 998, c. 2073, s. 2. 2 Mar., 1907, 34 Stat. L., 1253, c. 2575, s. 2. 2 Mar., 1909, 35 Stat. L., 686.

SEC. 23. In districts having more than one district judge, the judges may agree upon the division of business and assignment of cases for trial in said district; but in case they do not so agree, the senior circuit judge of the circuit in which the district lies, shall make all necessary orders for the division of business and the assignment of cases for trial in said district. (*36 Stat. L., 1090.*)

The substance of this section is to be found in the acts providing for an additional judge for Nebraska, for the northern district of California, for Oregon, and for the western district of Washington. To avoid the necessity for a similar provision in future acts of this character, the section has been so drawn as to be general in its application.

CHAPTER TWO.

DISTRICT COURTS—JURISDICTION.

SEC. 24. The district courts shall have original jurisdiction as follows:

Where the United States are plaintiffs; and of civil suits at common law or in equity.

R. S., s. 563, par. 4; 629, pars. 1, 2, 3. 13 Aug., 1888, 25 Stat. L., 434, c. 866, s. 1; Supp., 611.

First. Of all suits of a civil nature, at common law or in equity, brought by the United States, or by any officer thereof authorized by law to sue, or between citizens of the same State claiming lands under grants from different States; or, where the matter in controversy exceeds, exclusive of interest and costs, the sum or value of three thousand dollars, and (*a*) arises under the Constitution or laws of the United States, or treaties made, or which shall be made, under their authority, or (*b*) is between citizens of different States, or (*c*) is between citizens of a State and foreign States, citizens, or subjects. No district court shall have cognizance of any suit (except upon foreign bills of exchange) to recover upon any promissory note or other chose in action in favor of any assignee, or of any subsequent holder if such instrument be payable to bearer and be not made by any corporation, unless such suit might have been prosecuted in such court to recover upon said note or other chose in action if no assignment had been made: *Provided, however*, That the foregoing provision as to the sum or value of the matter in controversy shall not be construed to apply to any of the cases mentioned in the succeeding paragraphs of this section. (*36 Stat. L., 1091.*)

The jurisdiction of the circuit courts as to suits at common law, or in equity, or on the ground of diverse citizenship, etc., was last conferred by the first section of the act of August 13, 1888, the purpose of which was to correct the mistakes contained in an

earlier act. In United States *v.* Sayward, 160 U. S., 493, 498, the Supreme Court construed the language of that section and proceeded to restate it in its own language. The language of the court is accordingly followed in this paragraph.

With this is merged the jurisdiction of the district courts conferred by the fourth paragraph of section 563, Revised Statutes. Paragraphs 1, 2, and 3 of section 629, Revised Statutes, were superseded by the act of August 13, 1888.

The clause to the effect that as to the remaining clauses of the section the court shall have jurisdiction without regard to the sum or value of the property in dispute, was added for the purpose of removing all doubt upon the point, and is to meet claims similar to those advanced in Miller-Magee Co. *v.* Carpenter, 34 Fed., 433; and in Ames *v.* Hager, 36 Fed., 129.

That provision which prohibits the arrest of a person in one district for trial in another in a civil action, and prescribes the district in which civil suits shall be brought has been revised in section 51 of this code, p. 35.

SUITS OF A CIVIL NATURE, AT COMMON LAW, OR IN EQUITY.

"Suits of a civil nature, at common law or in equity, brought by the United States, or by any officer thereof authorized by law to sue."

This jurisdiction does not depend upon the value in controversy. United States *v.* Sayward, 160 U. S., 493; U. S. *v.* Reid, 90 Fed., 522. And applies to any suit in which the United States properly appears as plaintiff. U. S. *v.* Allen, 171 Fed., 907. This applies to suits upon official bonds. Postmaster General *v.* Early, 12 Wheat., 136; Duncan *v.* United States, 7 Pet., 435. A receiver of a national bank, appointed by the Comptroller of the Currency, may sue under this section. Frelinghuysen *v.* Baldwin, 12 Fed., 395. See Hallam *v.* Tillinghast, 75 Fed., 849; Murray *v.* Chambers, 151 Fed., 142.

"Suits of a civil nature" defined.—Wisconsin *v.* Pelican Ins. Co., 127 U. S., 265; Hunt *v.* United States, 166 U. S., 424; Dey *v.* Chicago, M. & St. P. R. Co., 45 Fed., 82. This jurisdiction depends upon the real nature of the action, and not its form. Indiana *v.* Allegheny Oil Co., 85 Fed., 870, 873. It may be a suit "of a civil nature" although a criminal proceeding in form. Illinois *v.* Illinois Central Railroad Co., 33 Fed., 721.

"Suits" defined.—Weston *v.* Charleston, 2 Pet., 449, 464. See also Bank *v.* Turnbull, 16 Wall., 190; Sewing Machine Co. Case, 18 Wall., 585.

Suits at common law or in equity.—This has been held to mean "not merely suits, which the common law recognized among its old and settled proceedings, but suits in which legal rights were to be ascertained and determined, in contradistinction to those where equitable rights alone were recognized, and equitable remedies were administered." Parsons *v.* Bedford, 3 Pet., 433; Livingston *v.* Story, 9 Pet., 632; Parish *v.* Ellis, 16 Pet., 451; Van Norden *v.* Morton, 99 U. S., 380. See Pooler *v.* U. S., 127 Fed., 519; U. S. *v.* Block 121, 3 Biss. 208, 24 Fed. Cas. 14, 610; Keith *v.* Town of Rockingham, 2 Fed., 834. Proceedings in eminent domain are civil suits at law under this section. Kohl *v.* United States, 91 U. S., 367. But not mandamus proceedings. Indiana *v.* Lake Erie & W. Ry. Co., 85 Fed., 1; Knapp *v.* Lake Shore R. Co., 197 U.S., 536. Even when presented in the form of a bill in equity. Smith *v.* Bourbon County, 127 U. S., 105. Garnishment proceedings will not lie under this section. Central Trust Co. *v.* Tennessee, etc. R. Co., 59 Fed., 523. Nor proceedings to establish a will. Wahl *v.* Franz, 100 Fed., 680. Or to set aside the probate of a will. Ellis *v.* Ellis, 109 U. S., 485. But the Federal courts have chancery jurisdiction in every State. Mississippi Mill *v.* Cohn, 150 U. S., 205; Union Pac. R. Co. *v.* Flynn, 180 Fed., 565; Armstrong Cork Co. *v.* Merchants' Refrigerating Co., 184 Fed., 199. See Kansas *v.* Colorado, 206 U. S., 46.

CASES AND CONTROVERSIES.

The words "cases" and "controversies," in the constitutional provision under which the jurisdiction exercised in this section has been conferred, have been variously defined and distinguished. See Smith *v.* Adams, 130 U. S., 167, 173; LaAbra Silver Mining Co. *v.* U. S., 175 U. S., 423, 456; Stevenson *v.* Fain, 195 U. S., 165, 167; Fisk *v.* Henarie, 32 Fed., 417, 423; Ayres *v.* U. S., 44 Ct. Cl., 110.

"By cases and controversies are intended the claims of litigants brought before the courts for determination by such regular proceedings as are established by law or custom for the protection or enforcement of rights, or the prevention, redress, or punishment of wrongs." Muskrat *v.* U. S., 219 U. S., 357.

CLAIMING LANDS UNDER GRANTS FROM DIFFERENT STATES.

This provision extends to all cases founded upon the conflicting grants of different States. Colson *v.* Lewis, 2 Wheat., 377. See Stevenson *v.* Fain, 195 U. S., 165. And does not depend upon the value in controversy. United States *v.* Sayward, 160 U. S., 497.

AMOUNT IN CONTROVERSY.

"Where the matter in controversy exceeds, exclusive of interest and costs, the sum or value of three thousand dollars."

For a discussion of the general scope of this clause, see U. S. *v.* Sayward, 160 U. S., 493. The phrases "amount in controversy," "matter in dispute," and "amount in dispute" have been used interchangeably. In Smith *v.* Adams (130 U. S., 167), it was said: "By matter in dispute is meant the subject of litigation, the matter upon which the action is brought and issue is joined, and in relation to which, if the issue be one of fact, testimony is taken." In Cowell *v.* City Water Supply Co., 121 Fed., 53, the phrase "matter in dispute" was said to mean the "amount or value of that which the complainant claims to recover, or the amount or value of that which the defendant will lose if the complainant obtains the recovery he seeks."

HOW VALUE SHOWN.

The value of the matter in dispute is shown by the whole record, and not by damages claimed, or the prayer for judgment alone. Bowman *v.* C. & N. W. R. Co., 115 U. S., 613; Brown *v.* Webster, 156 U. S., 328; Edwards *v.* Bates County, 55 Fed., 439. But where the damages are unliquidated, the *ad damnum* must be taken as the true measure of the value in dispute. Barry *v.* Edmunds, 116 U. S., 550. And the court has jurisdiction, though part of the claim is not yet due. Schunk *v.* Moline, etc., Co., 147 U. S., 500. Where the evidence shows the amount in controversy to be less than the required minimum, the plaintiff cannot amend the amount of damages claimed so as to save the jurisdiction of the court. Lee *v.* Watson, 1 Wall., 339. And the jurisdiction will be defeated if the evidence shows the amount in controversy is actually less than the required minimum, even though suit is brought for a sum exceeding the jurisdictional amount. Cabot *v.* McMaster, 65 Fed., 533; United States Express Co. *v.* Poe, 61 Fed., 475.

"In determining from the face of a pleading whether the amount really in dispute is sufficient to confer jurisdiction upon a court of the United States, it is settled that if from the nature of the case as stated in the pleadings there could not legally be a judgment for an amount necessary to the jurisdiction, jurisdiction cannot attach even though the damages be laid in the declaration at a larger sum." Vance *v.* Vandercook, 170 U. S., 468. Jurisdiction cannot be conferred by joining in a single suit separable claims against distinct defendants, or uniting the several interests of two or more plaintiffs. Citizens Bank *v.* Cannon, 164 U. S., 319; Walter *v.* Northeastern R. Co., 147 U. S., 370.

Where the nature of the action does not require the value of the thing demanded to be stated in the declaration, the value may be given in evidence. Ex parte Bradstreet, 7 Pet., 647; Beard *v.* Federy, 3 Wall., 494. Value may be shown by affidavit. The Grace Girdler, 6 Wall., 442; Street *v.* Ferry, 119 U. S., 385; Wilson *v.* Blair, 119 U. S., 387. But see Holden *v.* Utah & M. Mach. Co., 82 Fed., 209, 211.

Affidavit of value comes too late after case has been heard and dismissed for want of jurisdiction. Richmond *v.* Milwaukee, 21 How., 392.

On appeal, if the appeal be taken by the plaintiff, the whole sum claimed is the amount in controversy; but if the appeal is taken by the defendant the matter in dispute is the amount of the judgment against him. Cooke *v.* Woodrow, 5 Cranch, 14; Wise *v.* Col. Turnpike Co., 7 Cranch, 276; Gordon *v.* Ogden, 3 Pet., 34; Gordon *v.* Longest, 16 Pet., 97; Knapp *v.* Banks, 2 How., 72; Clifton *v.* Sheldon, 23 How., 481; Sampson *v.* Welsh, 24 How., 207; Walker *v.* U. S., 4 Wall., 163.

SUITS ARISING UNDER THE CONSTITUTION, LAWS OR TREATIES OF THE UNITED STATES.

Under the Constitution.—A case "may be truly said to arise under the Constitution or laws of the United States whenever its correct decision depends on the construction of either." Tennessee *v.* Davis, 100 U. S., 257; Cohens *v.* Virginia, 6 Wheat., 393. When the jurisdiction of a Federal court depends upon the case being one arising under the Constitution or laws of the United States, the facts necessary to make such a case must be plainly shown upon the record, and it is not enough that such questions may arise. Louisville *v.* Cumberland Telephone, etc., Co., 155 Fed., 725. Diverse citizenship is not essential to the exercise of this jurisdiction. Ames *v.* Kansas, 111 U. S., 449.

The following questions have been held to bring the cases within the scope of this provision. Impairment of the obligation of a contract. Pacific Electric Co., *v.* Los Angeles, 194 U. S., 112; Riverside R. R. Co. *v.* Riverside, 118 Fed., 736; Capital City Gas Co. *v.* Des Moines, 72 Fed., 818. Involving deprivation of property without due process of law, by means of state legislation. Ex parte Young, 209 U. S., 123; Crystal Springs Land and W. Co., 67 Fed., 148; St. Louis, etc., R. R. Co., *v.* Hadley, 155 Fed., 220. But no Federal question is presented where the deprivation of property is without legislative authority. Barney *v.* New York, 193 U. S., 430; Huntington *v.* New York, 193 U. S., 441. Depriving a person of his liberty without due process of

law. Cox *v.* Gilmer, 88 Fed., 343. On the question of equal protection of the laws, see Marten *v.* Holbrook, 157 Fed., 716; Brawner *v.* Irvin, 169 Fed., 964.

Suits under the laws of the United States.—"Cases arising under the laws of the United States are such as grow out of the legislation of Congress, whether they constitute the right or privilege or claim or protection, or defense of the party in whole or in part by whom they are asserted." New Orleans R. R. *v.* Mississippi, 102 U. S., 140. A suit against a corporation created by the laws of the United States may be sustained under this provision. Texas & P. Ry. Co. *v.* Cody, 166 U. S., 606. Suits by or against receivers appointed by a Federal court. Smith *v.* Greenhow, 109 U. S., 699; Wrightsville Hdw. Co. *v.* Hardware, etc., Mfg. Co., 180 Fed., 586. Suits by or against receivers of National Banks. Bartley *v.* Hayden, 74 Fed., 913; Thompson *v.* German Ins. Co., 76 Fed., 892; suits against officers of National banks, Bailey *v.* Mosher, 74 Fed., 15; suits upon bonds given by the officers of National banks for the faithful performance of duties, Walker *v.* Windsor Nat. Bank, 56 Fed., 76. Suits relating to rights in navigable waters. Miller *v.* New York, 109 U. S., 385; U. S. *v.* Wishkah Boom Co., 136 Fed., 42. Suits under land and mining laws. Wallula Pac. R. Co., *v.* Portland, etc., R. Co., 154 Fed., 902; Doolan *v.* Carr, 125 U. S., 618; Northern Pac. R. Co. *v.* Soderberg, 188 U. S., 526. A suit upon the bond of a marshal of the United States is cognizable under this section. Feibleman *v.* Packard, 109 U. S., 421. So is an action on a bond for the execution of a Government contract. Mullin *v.* U. S., 109 Fed., 817; U. S. *v.* Axman, 152 Fed., 816. And suits upon bonds taken in a suit pending in the Federal courts. Files *v.* Davis, 118 Fed., 465; Tullock *v.* Mulvane, 184 U. S., 497. Suits arising under the copyright laws. Wooster *v.* Crane, 147 Fed., 515. Under the patent laws. Pratt *v.* Paris Gas Light Co., 168 U. S., 255. Or for the infringement of letters patent. Excelsior Wooden Pipe Co. *v.* Pacific Bridge Co., 185 U. S., 294. Suits for the infringement of trademarks. Griggs *v.* Erie Preserving Co., 131 Fed., 359.

Treaties.—"A treaty is in its nature a contract between two nations, not a legislative act. It does not generally effect, of itself, the object to be accomplished, especially so far as its operation is infraterritorial; but is carried into execution by the sovereign power of the respective parties to the instrument." Foster *v.* Neilson, 2 Pet., 253, 314. A law passed in contravention of a treaty is void. Society *v.* New Haven, 8 Wheat., 464. Where the controversy was only as to what rights became vested under land grants confirmed by treaty, the suit was not one arising under a treaty so as to confer jurisdiction. Crystal Springs L. & W. Co., *v.* Los Angeles, 177 U. S., 169. And this jurisdiction can not be sustained by an allegation that the adverse claims are based on an erroneous construction of a treaty. Devine *v.* Los Angeles, 202 U. S., 313.

SUITS BETWEEN CITIZENS OF DIFFERENT STATES.

What constitutes citizenship.—"Persons may be citizens of the United States without being citizens of any State. Citizenship, in relation to the Federal judiciary, must be of that kind which identifies the party with some particular state of which he is a member. To constitute citizenship of a State in relation to the judiciary act requires, first, residence within such State; and, second, an intention that such residence shall be permanent. In this sense, state citizenship means the same thing as domicile in its general acceptation. The act of residence does not alone constitute the domicile of a party, but it is the fact of residence, accompanied by an intention of remaining, which constitutes domicile. The distinction between domicile and mere residence may be shortly put as that between residence *animo manendi* and residence *animo revertendi*. Mere residence may be for a transient purpose, as for business, for a fixed period, or limited by an expected future event, upon the happening of which there is a purpose to return or remove. The two elements of residence, and the intention that such residence shall be permanent, must concur to make citizenship. It has consequently been held from the beginning that an averment of residence is not the equivalent of an averment of citizenship for the purpose of supporting jurisdiction in the courts of the United States." Marks *v.* Marks, 75 Fed., 321, 324.

Who are citizens.—Corporations are "citizens" within the meaning of this section and may sue and be sued in the courts of the United States. Louisville, & R. Co. *v.* Letson, 2 How., 497; Marshall *v.* B. & O. R. Co., 16 How., 314; Lafayette Insurance Co. *v.* French, 18 How., 404; Paul *v.* Virginia, 8 Wall., 177; R. R. Co. *v.* Harris, 12 Wall., 82; Railway Co., *v.* Whitton, 13 Wall., 283; Sewing Machine Co. case, 18 Wall., 575; Muller *v.* Dows, 94 U. S., 444; Railroad Co. *v.* Vance, 96 U. S., 457; Boom Co. *v.* Patterson, 98 U. S., 407; Railroad Co. *v.* Koontz, 104 U. S., 12; Steamship Co. *v.* Tugman, 106 U. S., 118; St. Clair *v.* Cox, 106 U. S., 355; Kansas Pacific R. Co. *v.* Atchison R. Co., 112 U. S., 414; Nashua & Lowell R. R. *v.* Boston & Lowell R. R. Co., 136 U. S., 356; Barrow Steamship Co. *v.* Kane, 170 U. S., 100. And are included in the term "aliens." Barrow Steamship Co. *v.* Kane, 170 U. S., 106. But citizens of the Territories or of the District of Columbia are not citizens of a State under this section. Hooe *v.* Jamieson, 166 U. S., 395. A State is not a citizen under this section. Postal Cable Co. *v.* Alabama, 155 U. S., 482.

Pleading.—Averment of citizenship is necessary to give the court jurisdiction. Bingham *v.* Cabot, 3 Dall., 382; Abercrombie *v.* Dupuis, 1 Cranch, 343; Wood *v.* Wagnon, 2 Cranch, 9; Capron *v.* Van Noorden, 2 Cranch, 126; Sullivan *v.* Fulton S.

Co., 6 Wheat., 450; Brown *v.* Keene, 8 Pet., 112; Hornthall *v.* The Collector, 9 Wall., 565; Amory *v.* Amory, 95 U. S., 186; Grace *v.* American Ins. Co., 109 U. S., 283; Shaw *v.* Quincy Mining Co., 145 U. S., 444. The allegation is sufficient where the citizenship of the parties fairly appears. Jones *v.* Andrews, 10 Wall., 327. Citizenship is not sufficiently shown when stated only in the caption to the bill. Jackson *v.* Ashton, 8 Pet., 148. Nor by an averment that the complainant "resides" in the State. Everhart *v.* Huntsville College, 120 U. S., 223. As to what is a sufficient averment of citizenship, see Marshall *v.* B. & O. R. Co., 16 How., 314; Express Co. *v.* Kountze Bros., 8 Wall., 351; Insurance Co. *v.* Francis, 11 Wall., 210. Jurisdiction depends upon the state of things at the time of the action brought, and can not be ousted by subsequent change of residence of either of the parties. Mullan *v.* Torrence, 9 Wheat., 537; Dunn *v.* Clarke, 8 Pet., 1; Hardenbergh *v.* Ray, 151 U. S., 118.

Collusive transfers.—Jurisdiction cannot be secured by colorable transfers or collusive joinder of parties. Maxwell's Lessee *v.* Levy, 2 Dall., 381; Williams *v.* Nottawa, 104 U. S., 211; Hawes *v.* Oakland, 104 U. S., 459; Hayden *v.* Manning, 106 U. S., 586; Farmington *v.* Pillsbury, 114 U. S., 143; Provident Savings Soc. *v.* Ford, 114 U. S., 635; Hartog *v.* Memory, 116 U. S., 590; Morris *v.* Gilmer, 129 U. S., 315; Lehigh Mining & Mfg. Co. *v.* Kelly, 160 U. S., 339. See McDonald *v.* Smalley, 1 Pet., 620.

Objections.—Citizenship is not a part of the issue, but should be pleaded in abatement. DeWolf *v.* Rabaud, 1 Pet., 498; Smith *v.* Kernochen, 7 How., 198; Hartog *v.* Memory, 116 U. S., 590. Testimony as to residence cannot be received under a plea of *non assumpsit*. Sims *v.* Hundley, 6 How., 5, and note. A plea to the merits is a waiver of the right to challenge jurisdiction on the ground of citizenship. St. Louis, etc., Ry. *v.* McBride, 141 U. S., 127; Central Trust Co. *v.* McGeorge, 151 U. S., 129.

Parties.—All parties on one side of the controversy must be of different States from those on the other. Sewing Machine Companies, 18 Wall., 553; Am. Bible Society *v.* Price, 110 U. S., 61; Ayres *v.* Wiswall, 112 U. S., 192; N. J. Cent. R. Co. *v.* Mills, 113 U. S., 257; C. & N. W. R. Co. *v.* Crane, 113 U. S., 431; St. Louis R. Co. *v.* Wilson, 114 U. S., 60. See Stewart *v.* Dunham, 115 U. S., 61.

Representative parties.—Executors and administrators, if citizens of a different State from the party sued, may sue in the Federal courts, even though their testators or intestates would not have been so entitled. Chappedelaine *v.* Dechenaux, 4 Cranch, 307; Browne *v.* Strode, 5 Cranch, 303; Childress Exrs. *v.* Emery, 8 Wheat., 669; Rice *v.* Houston, 13 Wall., 66; Knapp *v.* Railroad Co., 20 Wall., 123; Walden *v.* Skinner, 101 U. S. 589; New Orleans *v.* Gaines, 138 U. S., 605. This applies to trustees. Coal Company *v.* Blatchford, 11 Wall., 172; Thayer *v.* Life Assn., 112 U. S., 717. And this jurisdiction is not barred by subsequency in the probate court of a State. Green *v.* Creighton, 23 How., 90. Nor because the judgment may effect the administration or distribution in another forum of the assets of the decedent's estate. Hess *v.* Reynolds, 113 U. S., 77.

A citizen of one State may sue for the use of a corporation, some of whose stockholders are citizens of the same State as the defendant. Irvine *v.* Lowry, 14 Pet., 298. Or for the use of a citizen of another State even though the plaintiff and defendant are citizens of the same State. McNutt *v.* Bland, 2 How., 10; Huff *v.* Hutchinson, 14 How., 586; Maryland *v.* Baldwin, 112 U. S., 490; Indiana *v.* Glover, 155 U. S., 517.

SUITS BETWEEN CITIZENS AND ALIENS.

Where an alien is a party the record must also show that the other party is a citizen. Mossman *v.* Higginson, 4 Dall., 12; Hodgson *v.* Bowerbank, 5 Cranch, 303; Jackson *v.* Twentyman, 2 Pet., 136; Piquignot *v.* Penn. R. Co., 16 How., 104. And the fact of alienage must affirmatively appear. Stuart *v.* Easton, 156 U. S., 46. A foreign sovereign may bring a civil suit under this section. The Sapphire, 11 Wall., 164; Columbia *v.* Cauca Co., 190 U. S., 524. A corporation created by the laws of a foreign country is a foreign citizen. Pelzer Mfg. Co. *v.* Hamburg-Bremen F. Ins. Co., 62 Fed., 1. And a foreign consul may be sued by a citizen, but the fact of alienage will not be presumed from other allegations. Bors *v.* Preston, 111 U. S., 252.

SUITS BETWEEN ALIENS.

When both parties are aliens, courts of United States have not jurisdiction. Montalet *v.* Murray, 4 Cranch, 46; Laird *v.* Indemnity Mut. Marine Assur. Co., 44 Fed., 712. Unless a Federal question is involved. Gage *v.* Riverside Trust Co., 156 Fed., 1002. An Indian residing in the United States is not a "foreign citizen or subject." Karahoo *v.* Adams, 1 Dill., 344; 14 Fed. Cas., 7614.

SUITS BY ASSIGNEES.

Purpose of statute.—"This provision was intended to prevent fraudulent assignments of choses in action made for the mere purpose of giving the court jurisdiction, and was not founded upon any constitutional principle." Barclay *v.* Levee Com'rs, 1 Woods, 254, 2 Fed. Cas., No. 977. It was inserted "for the purpose of relieving the Federal courts, as much as possible, of enforcing local contracts, and also of preventing assignments of choses in action to nonresidents for the purpose of rendering a defense upon the merits or a set-off less available to defendants." 1 Bliss., 98, 5 Fed. Cas., No. 2854. "The

essential requirement of this clause of the statute is satisfied when the citizenship of the assignor is such that he could have maintained a suit against the debtor in the circuit court." Bowden *v.* Burnham, 59 Fed., 752, 755. See also Davis *v.* Mills, 99 Fed., 39. In a suit brought by an assignee, he must show that it could have been prosecuted in the Federal court by his assignor. Holmes *v.* Goldsmith, 147 U. S., 150.

Construction.—The Supreme Court of the United States, in Kolze *v.* Hoadley, 200 U. S., 76, 82, has said that in construing this clause the decisions of that court have settled the following propositions: 1. That a suit to recover the *contents* of a promissory note or other chose in action is a suit to recover the amount due upon such note, or the amount claimed to be due upon an account, personal contract, or other chose in action. (Sere *v.* Pitot, 6 Cranch, 332.)

2. That a suit to foreclose a mortgage is within the inhibition of the act, and can only be maintained where the assignor was competent to file the bill. (Sheldon *v.* Sill, 8 How., 441.)

3. That the bill or other pleading must contain an averment showing that the suit could have been maintained by the assignor if no assignment had been made. (Turner *v.* Bank of North America, 4 Dall., 8.)

4. That a suit may be maintained between the immediate parties to a promissory note as indorser and indorsee, provided the requisite diversity of citizenship appears as between them, or upon a new contract arising subsequently to the execution of the original, notwithstanding a suit could not have been maintained upon the original contract. In such case the original contract may be considered to ascertain the amount of the damages. (Young *v.* Bryan, 6 Wheat., 146.)

"The circuit court (now district) shall have no jurisdiction over suits for the recovery of the contents of promissory notes or other choses in action brought in favor of assignees or transferees except over—First, suits upon foreign bills of exchange; second, suits that might have been prosecuted in such court to recover the said contents if no assignment or transfer had been made; third, suits upon choses in action payable to bearer and made by a corporation. New Orleans *v.* Quinlan, 173 U. S., 191, 193; Newgass *v.* New Orleans, 33 Fed., 196.

Concerning the construction of this section as contained in section 629, Revised Statutes, it has been said: "The terms used, 'the contents of any promissory note or other chose in action,' were designed to embrace the rights the instrument conferred which were capable of enforcement by suit. They were not happily chosen to convey this meaning, but they have received a construction substantially to that purport in repeated decisions of this court." Shoecraft *v.* Bloxham, 124 U. S., 730.

A bill of exchange drawn in one State and made payable in another is a "foreign" bill within the meaning of this section. Buckner *v.* Finley, 2 Pet., 586. A bank check is a bill of exchange under this section. Bull *v.* Bank of Kasson, 123 U. S., 105.

Suits have been maintained under this section by the holder of a railroad bond, payable in blank. White *v.* Vt. & Mass. R. Co., 21 How., 575. Upon county warrants payable to bearer. Kearny County *v.* Irvine, 126 Fed., 689. Also by the holder of coupons from a municipal bond, payable to bearer. Thompson *v.* Perrine, 106 U. S., 592; Chickaming *v.* Carpenter, 106 U. S., 666. And by the holder of a negotiable bond. Mfg. Co. *v.* Bradley, 105 U. S., 180; Ackley School Dist. *v.* Hall, 113 U. S., 140; Dodge *v.* Tulleys, 144 U. S., 451.

Recovery in specie.—"The assignee of a chose in action may maintain a suit in the Federal court to recover possession of the specific thing, or damages for its wrongful caption or detention." Deshler *v.* Dodge, 16 How., 622; Bushnell *v.* Kennedy, 9 Wall., 387; Ambler *v.* Eppinger, 137 U. S., 480.

Of crimes and offenses.

R. S., ss. 563, pars. 1, 2; 629, pars. 19, 20. 13 s. 2; 1 Supp., 799.

Second. Of all crimes and offenses cognizable under the authority of the United States. (*36 Stat. L., 1091.*)

Aug., 1888, 25 Stat. L., 433, c. 866; 1 Supp., 611. 4 Sept., 1890, 26 Stat. L., 424, c. 874.

Under this paragraph has been merged the jurisdiction conferred upon the circuit and district courts by existing law, which is preserved exclusive by section 256 of this Code, p. 131.

There are no common law offenses against the United States. U. S. *v.* Eaton, 144 U. S., 677. The Federal courts have no jurisdiction over common-law crimes. U, S. *v.* Dietrich, 126 Fed., 676. Offenses against the United States are not cognizable in those courts unless made so by acts of Congress. U. S. *v.* Shepherd, 1 Hughes, 520. 27 Fed. Cas., No. 16,274; U. S. *v.* Lewis, 36 Fed., 449.

Admiralty causes, seizures, and prizes.

R. S., ss. 563, pars. 8, 9; 629, par. 6.

Third. Of all civil causes of admiralty and maritime jurisdiction, saving to suitors in all cases the right of a common-law remedy where the common law is competent to give it; of all seizures on land or waters not within admiralty and maritime jurisdiction; of all prizes brought into the United States; and of all proceedings for the condemnation of property taken as prize. (*36 Stat. L., 1091.*)

Under this clause has been merged the jurisdiction conferred by existing law, the exclusive jurisdiction being preserved by section 256, p. 131

JURISDICTION.

"The power of Congress to legislate upon the subject has been derived both from the power to regulate commerce and from the clause of the Constitution extending the judicial power to 'all cases of admiralty and maritime jurisdiction.' * * * The grant of admiralty jurisdiction, 'saving to suitors the right of a common law remedy where the common law is competent to give it,' leaves open the common law jurisdiction of the State courts over torts committed at sea." The Hamilton, 207 U. S., 404. "It is not a remedy in the common law courts which is saved, but a common law remedy. A proceeding *in rem*, as used in the admiralty court, is not a remedy afforded by the common law; it is a proceeding under the civil law. When used in the common law courts it is given by statute." The Glide, 167 U. S., 606. "The true distinction between such proceedings as are, and such as are not, invasions of the exclusive admiralty jurisdiction," is pointed out in Knapp *v.* McCaffrey, 177 U. S., 638, 648. "One thing, however, is unquestionable; the Constitution must have referred to a system of law coextensive with, and operating uniformly in, the whole country. It certainly could not have been the intention to place the rules and limits of maritime law under the disposal and regulation of the several States, as that would have defeated the uniformity and consistency at which the Constitution aimed on all subjects of a commercial character affecting the intercourse of the States with each other or with foreign states." Workman *v.* New York City, 179 U. S., 561.

EXTENT OF.—This jurisdiction is not limited to tide waters, but extends to all public navigable lakes and rivers, where commerce is carried on between different States, or with a foreign nation. The Propeller Genesee Chief *v.* Fitzhugh, 12 How., 443. In re Garnett, 141 U. S., 15. It extends to all cases of tort committed on the high seas, and on navigable waters in this country. Philadelphia, etc., R. Co. *v.* Philadelphia, etc., Towboat Co., 23 How., 209. Over maritime contracts. Andrews *v.* Wall, 3 How., 568; The Glide, 167 U. S., 606. Salvage cases. Houseman *v.* The North Carolina, 15 Pet., 400. Enforcement of liens for maritime services. The Robert W. Parsons, 191 U. S., 31.

SEIZURES.—If the seizure is made on land, the case is not one of admiralty, but proceeds upon the common law side of the court and is to be tried by a jury. U. S. *v.* Winchester, 99 U. S., 374; U. S. *v.* Spraul, 185 Fed., 405. By "seizure" is meant the taking possession of the thing forfeited, for the purpose of enabling the proper judicial authority to adjudicate upon the cause of forfeiture. The Washington, 17 Law Rep. 497, 29 Fed. Cas., No. 17,222.

PRIZE.—Questions of prize are exclusively of admiralty jurisdiction. Bingham *v.* Cabot, 3 Dall., 19. "Prize is generally used as a technical term, to express a legal capture." The Resolution, 2 Dall., 1, 4. "Some act should be done, indicative of an intention to seize and to retain as prize; and it is always sufficient, if such intention is fairly to be inferred from the conduct of the captor." The Grotius, 9 Cranch, 370. "A prize court, when a proper case is made for its interposition, will proceed to adjudicate and condemn the captured property, or award restitution, although it is not actually in the control of the court. It may always proceed *in rem* whenever the prize or proceeds of the prize can be traced to the hands of any person whatever." Jecker *v.* Montgomery, 13 How., 515.

Fourth. Of all suits arising under any law relating to the slave trade. (*36 Stat. L., 1092.*)

Of suits under any law relating to the slave trade.

R. S., s. 629, par. 7.

This paragraph vests in the district courts the former jurisdiction of the circuit courts.

Cases relating to the slave trade. The Merino, 9 Wheat., 391; The Slavers, 2 Wall., 383.

Fifth. Of all cases arising under any law providing for internal revenue, or for revenue from imports or tonnage, except those cases arising under any law providing revenue from imports, jurisdiction of which has been conferred upon the Court of Customs Appeals. (*36 Stat. L., 1092.*)

Of cases under internal-revenue, customs, and tonnage laws.

R. S., ss. 563, par. 5; 629, par. 4.

This paragraph merges in the district courts the jurisdiction formerly vested in the circuit and district courts.

In a case involving the construction of Section 629, Revised Statutes, the Supreme Court has said: "The term 'revenue law,' when used in connection with the jurisdiction of the courts of the United States, means a law imposing duties on imports or tonnage, or a law providing in terms for revenue;" that is to say, a law which is directly traceable to the power granted to Congress by § 8, Art. I, of the Constitution, "to lay and collect taxes, duties, imposts and excises." And the court held that an act requiring a clerk of the District Court to account to the United States "for all he gets over a certain sum which is fixed by law" is not a revenue law within the meaning of this section. U. S. *v.* Hill, 123 U. S., 681. This jurisdiction does not depend upon the citizenship of the parties. Spreckles Sugar Ref. Co. *v.* McClain, 192 U. S., 407. It extends to suits *in rem* for forfeitures for violation of the internal revenue laws. Coffey *v.* U. S., 116 U. S., 427.

Of suits under postal laws.

R. S., ss. 563, par. 7; 629, par. 4.

Sixth. Of all cases arising under the postal laws. (*36 Stat. L., 1092.*)

This paragraph merges in the District Courts the concurrent jurisdiction formerly vested in the circuit and district courts.

The State courts have concurrent jurisdiction of cases arising under the postal laws. Lewis Pub. Co. *v.* Wyman, 152 Fed., 200. See also In re Rapier, 143 U. S., 110, 134.

Of suits under the patent, the copyright, and trade-mark laws.

R. S., s. 629, par. 9; 20 Feb., 1905, 33 Stat. L., 728, c. 592, s. 17.

Seventh. Of all suits at law or in equity arising under the patent, the copyright, and the trade-mark laws. (*36 Stat. L., 1092.*)

This paragraph confers upon the district courts the jurisdiction formerly vested in the circuit courts of cases arising under the patent, copyright, and trade mark laws. Exclusive jurisdiction of the district courts is provided for in section 256, p. 131.

Patent laws.—To constitute a cause arising under the patent laws "the plaintiff must set up some right, title or interest under the patent laws, or at least make it appear that some right or privilege will be defeated by one construction, or sustained by the opposite construction of these laws." Pratt *v.* Paris Gas Light & Coke Co., 168 U. S., 259. See also, New Marshall Co. *v.* Marshall Engine Co., 223 U. S., 473. A suit to enforce or set aside a contract connected with a patent is not a suit under the patent laws, and the jurisdiction depends upon the diversity of citizenship of the parties. Excelsior Wooden Pipe Co. *v.* Pacific Bridge Co., 185 U. S., 282. Such a contract does not necessarily involve a Federal question. Marsh *v.* Nichols, S. and Co., 140 U. S., 344. But a suit for infringement of letters patent is cognizable under this provision. White *v.* Rankin, 144 U. S., 628. In a suit for infringement of a patented invention, this jurisdiction depends upon the subject matter, and not upon the parties. Where the complaint did not involve the construction, or the validity, or the infringement of the patent, or any other question under the patent laws, the case was not cognizable by the Federal court. Holt *v.* Indiana Mfg. Co., 176 U. S., 68. But see Rauhe *v.* Justi, 196 Fed., 54. The United States may sue to set aside and cancel patents for inventions, where fraud has been practiced by the parties to whom they were issued. U. S. *v.* American Bell Tel. Co., 128 U. S., 315; 167 U. S., 269.

Copyright laws.—"A copyright cannot be sustained as a right existing at common law; but, as it exists in the United States, it depends wholly on the legislation of Congress." Banks *v.* Manchester, 128 U. S., 244, 252. An action to recover damages for the violation of a copyright may be maintained under this provision. Brady *v.* Daly, 175 U. S., 148.

Trademark cases.—Under the act of March 3, 1881 (21 Stat. L., 502), registration was said to be prima facie evidence of ownership, and that the certificate is evidence in any suit or action in which the registered trade mark is brought in controversy. "For it is the assertion of rights derived under the act which gives cognizance to courts of the United States when the controversy is between citizens of the same State, though the benefits of the act cannot be availed of if the alleged trademark is not susceptible of exclusive ownership as such, and not, therefore, of registration." Elgin Natl. Watch Co. *v.* Illinois Watch Co., 179 U. S., 665, 672. Where the parties are citizens of the same State and it was not alleged that the trademark involved was used on goods intended to be transported to a foreign country, the court was without jurisdiction. Ryder *v.* Holt, 128 U. S., 525.

Of suits for violations of interstate-commerce laws.

4 Feb., 1887, 24 Stat. L., 382, c. 104, s. 9; 1 Supp., 530. 2 Mar., 1889, 25 Stat. L., 857, c. 382; 1 Supp., 684. 10 Feb., 1891, 26 Stat. L., 743, c. 128; 1 Supp., 891. 11 Feb., 1893, 27 Stat. L., 443, c. 83; 2 Supp., 80. 8 Feb., 1895, 28 Stat. L., 643, c. 61; 2 Supp., 369.

Eighth. Of all suits and proceedings arising under any law regulating commerce, except those suits and proceedings exclusive jurisdiction of which has been conferred upon the Commerce Court. (*36 Stat. L., 1092.*)

This paragraph declares the jurisdiction of cases arising under the interstate commerce acts formerly vested in the circuit and district courts, excluding the jurisdiction which has been conferred upon the Commerce Court by section 207, p. 108.

The following statutes are illustrative of the jurisdiction declared by this section.

Act of February 4, 1887, 24 Stat. L., 382, c. 104, s. 9; 1 Supp., 530 (suits of persons claiming to be damaged; testimony may be compelled); In re Lennon, 166 U. S., 548; Interstate Commerce Com. *v.* Brimson, 154 U. S., 447. That this is a penal statute, see Ratican *v.* Terminal R. Assn., 114 Fed., 671. On the measure of damages, see Van Patten *v.* Chicago, etc., R. Co., 81 Fed., 546. That the jurisdiction of the Federal courts is exclusive, see Northern Pac. R. Co. *v.* Pacific Coast Lumber M'nfg. Assn., 165 Fed., 1. That action by the Interstate Commerce Commission must precede suit under this section, see Texas & Pacific Ry. *v.* Abilene Cotton Oil Co., 204 U. S., 440.

Act of March 2, 1889, 25 Stat. L., 857, c. 382, s. 10; 1 Supp., 684 (mandamus to compel equal facilities to shippers). "There must not only be a discrimination, but it must be an unjust discrimination; and that character of discrimination must not only be pleaded, but it must be proved by the relator, otherwise the writ of mandamus

will be denied him." U. S. *v.* Norfolk, etc., R. Co., 114 Fed., 682. See also Merchant's Coal Co. *v.* Fairmont Coal Co., 160 Fed., 760.

Act of February 10, 1891, 26 Stat. L., 743, c. 128., s. 12; 1 Supp., 891 (prosecution of proceedings, witnesses, testimony). As to the constitutionality of the section, see Interstate Commerce Com. *v.* Brimson, 154 U. S., 447, 472. See also Harriman *v.* Interstate Commerce Com., 211 U. S., 406, on the attendance and testimony of witnesses.

Act of February 11, 1893, 27 Stat. L., 443, c. 83; 2 Supp., 80 (self-incriminating testimony). See note to this statute, 2 Supp., 80. As to the immunity afforded by this act, see Interstate Commerce Com. *v.* Baird, 184 U. S., 25, 45; Brown *v.* Walker, 161 U. S., 591.

Act of March 2, 1893, 27 Stat. L., 531, c. 196; 2 Supp., 102, as amended by the act of April 1, 1896, 29 Stat. L., 85, c. 87; 2 Supp., 455. Act of March 2, 1903, 32 Stat. L., 943 (safety appliance acts). Chicago B. & Q. R. Co. *v.* U. S., 220 U. S., 559; Schlemmer *v.* Buffalo, etc., R. Co., 220 U. S., 590.

Act of June 29, 1906, 34 Stat. L., 607, c. 3594 (to prevent cruelty to animals while in transit); B. & O. & Southwestern R. Co. *v.* U. S., 220 U. S., 94.

Act of March 4, 1907, 34 Stat. L., 1415, c. 2939 (hours of service act); held to be constitutional in B. & O. R. Co. *v.* Interstate Com. Com., 221 U. S., 612.

Act of April 5, 1910, 36 Stat. L., 291, c. 143, amending the act of April 22, 1908, 35 Stat. L., 65, c. 149 (employers' liability acts); upheld by the Supreme Court in the Second Employers' Liability Cases, 223 U. S., 1.

Act of February 17, 1911, 36 Stat. L., 913, c. 103 (locomotive boiler inspection act).

Of penalties and forfeitures.

R. S., ss. 563, pars. 3, 6; 629, par. 5.

Ninth. Of all suits and proceedings for the enforcement of penalties and forfeitures incurred under any law of the United States. (*36 Stat. L., 1092.*)

This jurisdiction is made exclusive by section 256. This paragraph confers upon the district courts the jurisdiction formerly vested in the circuit and district courts.

Penalties.—An action to recover a penalty is a proceeding criminal in its nature, but it may be enforced in a civil action. Lees *v.* United States, 150 U. S., 479. See also U. S. *v.* Stevenson, 215 U. S., 198. The word "penalty" denotes punishment, "whether corporal or pecuniary, imposed and enforced by the State, for a crime or offense against its laws." Huntington *v.* Attrill, 146 U. S., 667. "The power of the State to impose fines and penalties for a violation of its statutory requirements is coeval with government; and the mode in which they shall be enforced, whether at the suit of a private party, or at the suit of the public, and what disposition shall be made of the amounts collected, are merely matters of legislative discretion." Missouri Pac. Ry. Co. *v.* Humes, 115 U. S., 523.

Forfeitures.—"The term forfeiture imports a penalty; it has no necessary or natural connection with the measure or degree of injury which may result from a breach of contract, or from an imperfect performance. It implies an absolute infliction, regardless of the nature and extent of the causes by which it is superinduced. Unless, therefore, it shall have been expressly adopted and declared by the parties to be a measure of injury or compensation, it is never taken as such by courts of justice, who leave it to be enforced where this can be done in its real character, viz, that of a penalty." Van Buren *v.* Digges, 11 How., 476.

Of suits on debentures.

R. S., ss. 563, par. 10; 629, par. 8.

Tenth. Of all suits by the assignee of any debenture for drawback of duties, issued under any law for the collection of duties, against the person to whom such debenture was originally granted, or against any indorser thereof, to recover the amount of such debenture. (*36 Stat. L., 1092.*)

This paragraph confers upon the district courts the concurrent jurisdiction formerly exercised by the circuit and district courts. See section 3039, Revised Statutes.

Of suits for injuries on account of acts done under laws of the United States.

R. S., s. 629, par. 12.

Eleventh. Of all suits brought by any person to recover damages for any injury to his person or property on account of any act done by him, under any law of the United States, for the protection or collection of any of the revenues thereof, or to enforce the right of citizens of the United States to vote in the several States. (*36 Stat. L., 1092.*)

The jurisdiction conferred on the district courts by this section is that formerly exercised by the circuit courts.

In a suit upon the bond of a deputy collector for the embezzlement of funds by him, it was held that the collector of internal revenue had "received an injury to his property" on account of "an act done by him." Crawford *v.* Johnson, 1 Deady, 457, 6 Fed. Cas., No. 3369.

Actions for damages to enforce the right to vote. See Swafford *v.* Templeton, 185 U. S., 487; Giles *v.* Harris, 189 U. S., 492.

Of suits concerning civil rights.

R. S., ss. 563, par. 11; 629, par. 17. 1 Mar., 1875, 18 Stat. L., 335, c. 114; 1 Supp., 67.

Twelfth. Of all suits authorized by law to be brought by any person for the recovery of damages on account of any injury to his person or property, or of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section nineteen hundred and eighty, Revised Statutes. (*36 Stat. L., 1092.*)

The reference to section 1985, Revised Statutes, in paragraph 11 of section 563, Revised Statutes, evidently was a mistake, and should have been to section 1980, the same jurisdiction that was vested in the circuit courts under paragraph 17, of section 629, and now conferred upon the district courts.

See Civil Rights Cases, 109 U. S., 3; United States *v.* Patrick, 54 Fed., 338; Blyew *v.* U. S., 13 Wall., 581. That this section applies only to rights dependent on the Constitution and valid and constitutional laws of the United States, see U. S. *v.* Sanges, 48 Fed., 78.

Of suits against persons having knowledge of conspiracy, etc.

R. S., s. 629, par. 18.

Thirteenth. Of all suits authorized by law to be brought against any person who, having knowledge that any of the wrongs mentioned in section nineteen hundred and eighty, Revised Statutes, are about to be done, and, having power to prevent or aid in preventing the same, neglects or refuses so to do, to recover damages for any such wrongful act. (*36 Stat. L., 1092.*)

This paragraph is taken from section 629, Revised Statutes, and confers on the district courts the jurisdiction therein vested in the circuit courts.

Of suits to redress deprivation, under color of law, of civil rights.

R. S., ss. 563, par. 12; 629, par. 16.

Fourteenth. Of all suits at law or in equity authorized by law to be brought by any person to redress the deprivation, under color of any law, statute, ordinance, regulation, custom, or usage of any State, of any right, privilege, or immunity, secured by the Constitution of the United States, or of any right secured by any law of the United States providing for equal rights of citizens of the United States, or of all persons within the jurisdiction of the United States. (*36 Stat. L., 1092.*)

This paragraph merges in the district courts the jurisdiction formerly vested in the circuit and district courts.

This section has reference to civil rights only. Holt *v.* Indiana Mfg. Co., 176 U. S., 72. Certain rights and privileges of National citizenship are enumerated in Twining *v.* New Jersey, 211 U. S., 97. As to the right of suffrage, see Minor *v.* Happersett, 21 Wall., 162. As to the deprivation of a right "secured by the Constitution," see Moyer *v.* Peabody, 212 U. S., 78. As to contracts and agreements to labor, see Hodges *v.* U. S., 203 U. S., 1. As to the wrongful rejection of plaintiff's vote for a member of Congress, see Brickhouse *v.* Brooks, 165 Fed., 534. As to the rights and persons protected by this section, see Brawner *v.* Irvin, 169 Fed., 964. As to the scope of the equitable jurisdiction of the Federal courts under this section, see Giles *v.* Harris, 189 U. S., 475, 486.

Of suits to recover certain offices.

R. S., ss. 563, par. 13; 629, par. 13.

Fifteenth. Of all suits to recover possession of any office, except that of elector of President or Vice-President, Representative in or Delegate to Congress, or member of a State legislature, authorized by law to be brought, wherein it appears that the sole question touching the title to such office arises out of the denial of the right to vote to any citizen offering to vote, on account of race, color, or previous condition of servitude: *Provided*, That such jurisdiction shall extend only so far as to determine the rights of the parties to such office by reason of the denial of the right guaranteed by the Constitution of the United States, and secured by any law, to enforce the right of citizens of the United States to vote in all the States. (*36 Stat. L., 1092.*)

This paragraph merges in the District Courts the jurisdiction formerly exercised concurrently by the Circuit and District Courts.

See Johnson *v.* Jumel, 3 Woods, 69, 13 Fed. Cas., No. 7392; Kellogg *v.* Warmouth, 14 Fed. Cas., No. 7667.

Of suits against national banking associations.

R. S., ss. 563, par. 15; 629, pars. 10, 11. 12 July, 1882, 22 Stat. L., 163, c. 290, s. 4; 1 Supp., 354. 13 Aug., 1888, 25 Stat. L., 436, c. 866, s. 4; 1 Supp., 614.

Sixteenth. Of all cases commenced by the United States, or by direction of any officer thereof, against any national banking association, and cases for winding up the affairs of any such bank; and of all suits brought by any banking association established in the district for which the court is held, under the provisions of title "National Banks," Revised Statutes, to enjoin the Comptroller of the Currency, or any receiver acting under his direction, as provided

by said title. And all National banking associations established under the laws of the United States shall, for the purposes of all other actions by or against them, real, personal, or mixed, and all suits in equity, be deemed citizens of the States in which they are respectively located. (*36 Stat. L., 1092.*) [See §§ 49, 64.]

This paragraph supersedes the 10th and 11th clauses of section 629, Revised Statutes, as amended, and merges the jurisdiction there conferred on the Circuit Courts with the former jurisdiction of the District Courts.

Status of National Banks under this provision, see Cont. Nat. Bank *v.* Buford, 191 U. S., 123. A national bank, located in one State, may bring suit against a citizen of another State, in the federal court for the district where the defendant resides, by reason alone of diverse citizenship. Petri *v.* Commercial Natl. Bank of Chicago, 142 U. S., 644. Winding up suits. International Trust Co. *v.* Weeks, 203 U. S., 364. Suits by or against receivers. Kennedy *v.* Gibson, 8 Wall., 498. Suit to enjoin the collection of a State tax exacted on shares. Cummings *v.* Merchants Natl. Bank, 101 U. S., 153.

Seventeenth. Of all suits brought by any alien for a tort only, in violation of the laws of nations or of a treaty of the United States. (*36 Stat. L., 1093.*)

Suits by aliens for torts.

R. S., s. 563, par. 16.

This paragraph is a reenactment of the former jurisdiction of the District Courts.

"The courts will not declare an act to be a tort 'in violation of the law of nations or of a treaty of the United States' when the Executive, Congress and the treaty making power have all adopted it." O'Reilly de Camara *v.* Brooke, 209 U. S., 45.

Eighteenth. Of all suits against consuls and vice-consuls. (*36 Stat. L., 1093.*)

Suits against consuls or vice-consuls.

R. S., s. 563, par. 17.

This paragraph states the jurisdiction formerly vested in the district courts. The words "except for offenses above the description aforesaid" are omitted as meaningless, and should not have been carried into the Revised Statutes. They refer to offenses the punishment for which exceeded a fine of $100, or imprisonment exceeding six months, or whipping exceeding thirty stripes, as found in section 9 of the Judiciary Act of 1789 (1 Stat. 77), the punishment for offenses above that grade being vested in the circuit courts. (See U. S. *v.* Ravara, 27 Fed. Cas., 714, No. 16, 122).

Exclusive jurisdiction is provided for in section 256, p. 131.

This provision has been held to apply only to consuls and vice-consuls of foreign governments residing in the United States. Milward *v.* McSaul, 17 Fed. Cas., No. 9624. And includes a suit in equity against a consul of a foreign country. Pooley *v.* Luco, 76 Fed., 146. "The constitutional grant of original jurisdiction to the Supreme Court of all cases affecting consuls, does not prevent Congress from conferring original jurisdiction, in such cases, also, upon the subordinate courts of the Union." Bors *v.* Preston, 111 U. S., 252.

Nineteenth. Of all matters and proceedings in bankruptcy. (*36 Stat. L., 1093.*)

Of suits and proceedings in bankruptcy.

R. S., s. 563, par. 18.

1 July, 1898, 30 Stat. L., 545, 552, c. 541, ss. 2, 23; 2 Supp., 843.

This paragraph is merely declaratory of jurisdiction in the district courts of all matters and proceedings in bankruptcy, conferred by sections 2 and 23 of the act of July 1, 1898, and is stated substantially in the language of paragraph 18 of section 563.

Section 256 provides for exclusive jurisdiction in these cases, p. 131.

As to the effect of the act of 1898 on the jurisdiction of the district courts, see Bardes *v.* Hawarden Bank, 178 U. S., 524. On the general power of courts of bankruptcy and conflict between State and Federal courts, see In re Watts and Sachs, 190 U. S., 1. On the question of uniformity, see Hanover Nat. Bank *v.* Moyses, 186 U. S., 181. That diverse citizenship is not necessary to the exercise of jurisdiction, see Bush *v.* Elliott, 202 U. S., 477. As to the "line of demarcation between 'proceedings in bankruptcy' and 'controversies at law and in equity,'" under the provisions of section 23 of the Bankruptcy act, see Morehouse *v.* Pacific Hdw. Co., 177 Fed., 337, 339. Determination of colorable adverse claims, see Muller *v.* Nugent, 184 U. S., 1. When property is in possession of the court, see Metcalf *v.* Barker, 187 U. S., 165. That property is in the custody of the court upon the filing of the petition, see Whitney *v.* Wenman, 198 U. S., 552.

Twentieth. Concurrent with the Court of Claims, of all claims not exceeding ten thousand dollars founded upon the Constitution of the United States or any law of Congress, or upon any regulation of an Executive Department, or upon any contract, express or implied, with the Government of the United States, or for damages, liquidated or unliquidated, in cases not sounding in tort, in respect to which claims the party would be entitled to redress against the United States, either in a court of law, equity, or admiralty, if the United

Of suits against the United States.

3 Mar., 1887, 24 Stat. L., 505, c. 359, ss. 1, 2; 1 Supp., 559.

27 June, 1898, 30 Stat. L., 495, c. 503, ss. 1, 2; 2 Supp., 813.

26 Feb., 1900, 31 Stat. L., 33, c. 25; 2 Supp., 1119.

States were suable, and of all set-offs, counterclaims, claims for damages, whether liquidated or unliquidated, or other demands whatsoever on the part of the Government of the United States against any claimant against the Government in said court: *Provided, however*, That nothing in this paragraph shall be construed as giving to either the district courts or the Court of Claims jurisdiction to hear and determine claims growing out of the late civil war, and commonly known as "war claims," or to hear and determine other claims which had been rejected or reported on adversely prior to the third day of March, eighteen hundred and eighty-seven, by any court, department, or commission authorized to hear and determine the same, or to hear and determine claims for pensions; or as giving to the district courts jurisdiction of cases brought to recover fees, salary, or compensation for official services of officers of the United States or brought for such purpose by persons claiming as such officers or as assignees or legal representatives thereof; but no suit pending on the twenty-seventh day of June, eighteen hundred and ninety-eight, shall abate or be affected by this provision: *And provided further*, That no suit against the Government of the United States shall be allowed under this paragraph unless the same shall have been brought within six years after the right accrued for which the claim is made: *Provided*, That the claims of married women, first accrued during marriage, of persons under the age of twenty-one years, first accrued during minority, and of idiots, lunatics, insane persons, and persons beyond the seas at the time the claim accrued, entitled to the claim, shall not be barred if the suit be brought within three years after the disability has ceased; but no other disability than those enumerated shall prevent any claim from being barred, nor shall any of the said disabilities operate cumulatively. All suits brought and tried under the provisions of this paragraph shall be tried by the court without a jury. (*36 Stat. L., 1093.*)

War claims.

Limitations.

Claims of married women, etc.

This paragraph recites the jurisdiction formerly vested in the district courts by the Tucker Act of March 3, 1887 (1 Supp., 559), and the acts in amendment thereof above cited. (See Sec. 145, p. 86.)

In U. S. *v.* Greathouse (166 U. S., 601) the Supreme Court held that the provisions in section 1069, Revised Statutes, giving to persons under disability the right to maintain suit within three years after disability ceased, was not repealed by the six-year limitation in the Tucker Act, and that it applied to cases in the district courts as well as to cases in the Court of Claims. That saving clause has therefore been carried into this paragraph.

On the construction of the Tucker Act generally, see Dooley *v.* U. S., 182 U. S., 222. "Claims founded upon the Constitution or any law of Congress." United States *v.* Lynah, 188 U. S., 445, 475, 478. "Claims upon any contract, express or implied." U. S. *v.* Great Falls Mfg. Co., 112 U. S., 645, 656. In an action based upon the use of a patent, and which was held to be one "sounding in tort," the Supreme Court said that "some element of contractual liability must lie at the foundation of every action." Schillinger *v.* U. S., 155 U. S., 167. "Cases sounding in tort." Hill *v.* U. S., 149 U. S., 593. An assignee may sue in his own name under this section. U. S. *v.* Jones, 131 U. S., 1. The absence of a jury trial under this section does not violate the Seventh Amendment. McElrath *v.* U. S., 102 U. S., 426.

On the right of appeal from decisions under this section, see Reid *v.* U. S., 211 U. S., 529. War claims excluded by this section, see U. S. *v.* Winchester, 163 U. S., 253.

Twenty-first. Of proceedings in equity, by writ of injunction, to restrain violations of the provisions of laws of the United States to prevent the unlawful inclosure of public lands; and it shall be sufficient to give the court jurisdiction if service of original process be had in any civil proceeding on any agent or employee having charge or control of the inclosure. (*36 Stat. L., 1093.*)

Of suits for the unlawful inclosure of public lands.

25 Feb., 1885, 23 Stat. L., 321, c. 149, s. 2; 1 Supp., 478.

This paragraph merely states the jurisdiction conferred concurrently on the circuit and district courts by the act of February 25, 1885, to prevent the unlawful inclosure of public lands.

A suit under this act is a summary proceeding in the nature of a suit in equity. Cameron *v.* U. S., 148 U. S., 301. And the provisions of the act do not operate upon persons who have taken possession of land under a *bona fide* claim or color of title. Idem. As to the constitutionality of the act, see Camfield *v.* U. S., 167 U. S., 518.

See also U. S. *v.* Camfield, 59 Fed., 562.

Twenty-second. Of all suits and proceedings arising under any law regulating the immigration of aliens, or under the contract labor laws. (*36 Stat. L., 1093.*)

Of suits under immigration and contract-labor laws.

26 Feb., 1885, 23 Stat. L., 333, c. 164, s. 3; 1 Supp., 479. 3 Mar., 1891, 26 Stat. L., 1086, c. 551, s. 13; 1 Supp., 937. 3 Nov., 1893, 28 Stat. L., 7, c. 14, s. 6; 2 Supp., 153. 20 Feb., 1907, 34 Stat. L., 907, c. 1134, s. 29.

This paragraph states the jurisdiction formerly vested in the circuit and district courts under the various acts relating to immigration, including the contract-labor and Chinese-exclusion laws.

That the act of February 26, 1885, is constitutional, see Lees *v.* U. S., 150 U .S., 476. As to the construction of the act generally, see Holy Trinity Church *v.* U. S., 143 U. S., 457.

"The right to exclude or expel aliens, or any class of aliens, absolutely or upon certain conditions, in war or in peace, is an inherent and inalienable right of every sovereign and independent nation." Fong Yue Ting *v.* U. S., 149 U. S., 698.

"The Alien Immigration Act of February 20, 1907, applies to Chinese laborers illegally coming to this country notwithstanding the special acts relating to the exclusion of Chinese." U. S. *v.* Wong You, 223 U. S., 67.

Deportation of alien anarchist. Turner *v.* Williams, 194 U. S., 279.

See notes to 2 Supp., R. S., pp. 14, 153.

Twenty-third. Of all suits and proceedings arising under any law to protect trade and commerce against restraints and monopolies. (*36 Stat. L., 1093.*)

Of suits against trusts, monopolies, and unlawful combinations.

2 July, 1890, 26 Stat. L., 209, c. 647; 1 Supp., 763. 27 Aug., 1894, 28 Stat. L., 570, c. 349, ss. 73, 74, 75; 2 Supp., 333.

The jurisdiction of suits under the Sherman antitrust act, and section 77 of the Wilson tariff act of 1894, is conferred upon the district courts under this paragraph.

"When Congress, under and in the exercise of powers conferred by the constitution, adopts or creates common law offenses, the courts may properly look to that body of jurisprudence for the true meaning and definition of such crimes." In re Greene, 52 Fed., 111. See Standard Oil Co. *v.* U. S., 221 U. S., 1, 50.

"In a suit instituted in the name of the United States, under the antitrust act, jurisdiction depends alone upon the act; and the court is concerned with no case between private persons or corporations, where jurisdiction depends on other conditions, and in which proceeding a common-law remedy might become available." U. S. *v.* Addyston Pipe & Steel Co., 78 Fed., 712.

Under the antitrust act a Federal court has authority to issue injunctions to restrain violations of the act; to punish for contempt if the order is disobeyed; and its findings as to the fact of disobedience are not reviewable on *habeas corpus* in the Supreme Court. In re Debs, 158 U. S., 565.

A private party can not enforce the law by a bill in equity, his remedy being by an action for damages. Southern Ind. Exp. Co. *v.* U. S. Exp. Co., 88 Fed., 659. Nonresidents can not be brought in under the authority of section 5 of the antitrust act in a suit by private parties. Greer, Mills & Co. *v.* Stoller, 77 Fed., 1.

The record must affirmatively show jurisdiction in the Federal court. Minnesota *v.* Northern Securities Co., 194 U. S., 48.

Twenty-fourth. Of all actions, suits, or proceedings involving the right of any person, in whole or in part of Indian blood or descent, to any allotment of land under any law or treaty. And the judgment or decree of any such court in favor of any claimant to an allotment of land shall have the same effect, when properly certified to the Secretary of the Interior, as if such allotment had been allowed and approved by him; but this provision shall not apply to any lands now or heretofore held by either of the Five Civilized Tribes, the Osage Nation of Indians, nor to any of the lands within the Quapaw Indian Agency: *Provided*, That the right of appeal shall be allowed to either party as in other cases. (*36 Stat. L., 1094.*)

Of suits concerning allotments of land to Indians.

15 Aug., 1894, 28 Stat. L., 305, c. 290; 2 Supp., 246. 21 Dec., 1911, 37 Stat. L., 46, c. 5.

This paragraph is declaratory of the jurisdiction formerly vested in the circuit courts. The amendment of December 21, 1911, is included.

That actual residence on the Indian reservation is not necessary to give the right of allotment to a member of a tribe mentioned in the act, see Hy-Yu-Tse-Mil-Kin *v.* Smith, 194 U. S., 401. That the State courts have no authority to pass upon any question, either as to title to the allotment, or the mere possession thereof, which those courts did not have prior to the act of 1894, see McKay *v.* Kalyton, 204 U. S., 458. See also Heckman *v.* U. S., 224 U. S., 441.

Twenty-fifth. Of suits in equity brought by any tenant in common or joint tenant for the partition of lands in cases where the United States is one of such tenants in common or joint tenants, such suits to be brought in the district in which such land is situate. (*36 Stat. L., 1094.*)

Of partition suits where United States is joint tenant.

17 May, 1898, 30 Stat. L., 416, c. 339, s. 1; 2 Supp., 764.

The effect of this paragraph is to transfer to the district courts the jurisdiction formerly exercised by the circuit courts.

Appellate jurisdiction under Chinese exclusion laws.

13 Sept., 1888, 25 Stat. L., 479, c. 1015, s. 13; 2 Supp., 144.

SEC. 25. The district courts shall have appellate jurisdiction of the judgments and orders of United States commissioners in cases arising under the Chinese exclusion laws. (*36 Stat. L., 1094.*)

This section merely states, in concise terms, the jurisdiction formerly vested in the district and circuit courts to review the orders of the United States commissioners in Chinese deportation cases.

A United States commissioner has power to determine the various facts upon which citizenship depends, and may order the deportation of aliens unlawfully here. Chin Bak Kan *v.* U. S., 186 U. S., 193.

On the question of appeals to the district court, see The United States, Petitioner, 194 U. S., 194.

Appellate jurisdiction over Yellowstone National Park.

7 May, 1894, 28 Stat. L., 74, c. 72, s. 5; 2 Supp., 185.

SEC. 26. The district court for the district of Wyoming shall have jurisdiction of all felonies committed within the Yellowstone National Park, and appellate jurisdiction of judgments in cases of conviction before the commissioner authorized to be appointed under section five of an act entitled "An Act to protect the birds and animals in Yellowstone National Park, and to punish crimes in said Park, and for other purposes," approved May seventh, eighteen hundred and ninety-four. (*36 Stat. L., 1094.*)

This section is merely declaratory of the original and appellate jurisdiction already conferred upon the district court for the district of Wyoming.

Right to hunt game in Yellowstone Park as affected by treaty with the Bannock Indians. Ward *v.* Race Horse, 163 U. S., 504.

Jurisdiction of crimes on Indian reservations in South Dakota.

2 Feb., 1903, 32 Stat. L., 793, c. 351, s. 1.

SEC. 27. The district court of the United States for the district of South Dakota shall have jurisdiction to hear, try, and determine all actions and proceedings in which any person shall be charged with the crime of murder, manslaughter, rape, assault with intent to kill, arson, burglary, larceny, or assault with a dangerous weapon, committed within the limits of any Indian reservation in the State of South Dakota. (*36 Stat. L., 1094.*)

This section vests in the district court the former concurrent jurisdiction of the circuit and district courts of the offenses named, when committed within any Indian reservation in the State of South Dakota.

CHAPTER THREE.

DISTRICT COURTS—REMOVAL OF CAUSES.

Removal of suits from State to United States district courts.

3 Mar., 1875, 18 Stat. L., 470, c. 137, s. 2.
13 Aug., 1888, 25 Stat. L., 434, c. 866, s. 2; 1 Supp., 612.

SEC. 28. Any suit of a civil nature, at law or in equity, arising under the Constitution or laws of the United States, or treaties made, or which shall be made, under their authority, of which the district courts of the United States are given original jurisdiction by this title, which may now be pending or which may hereafter be brought, in any State court, may be removed by the defendant or defendants therein to the district court of the United States for the proper district. Any other suit of a civil nature, at law or in equity, of which the district courts of the United States are given jurisdiction by this title, and which are now pending or which may hereafter be brought, in any State court, may be removed into the district court of the United States for the proper district by the defendant or defendants therein, being non-residents of that State. And when in any suit

By non-resident defendants.

mentioned in this section there shall be a controversy which is wholly between citizens of different States, and which can be fully determined as between them, then either one or more of the defendants actually interested in such controversy may remove said suit into the district court of the United States for the proper district. And where a suit is now pending, or may hereafter be brought, in any State court, in which there is a controversy between a citizen of the State in which the suit is brought and a citizen of another State, any defendant, being such citizen of another State, may remove such suit into the district court of the United States for the proper district, at any time before the trial thereof, when it shall be made to appear to said district court that from prejudice or local influence he will not be able to obtain justice in such State court, or in any other State court to which the said defendant may, under the laws of the State, have the right, on account of such prejudice or local influence, to remove said cause: *Provided*, That if it further appear that said suit can be fully and justly determined as to the other defendants in the State court, without being affected by such prejudice or local influence, and that no party to the suit will be prejudiced by a separation of the parties, said district court may direct the suit to be remanded, so far as relates to such other defendants, to the State court, to be proceeded with therein. At any time before the trial of any suit which is now pending in any district court, or may hereafter be entered therein, and which has been removed to said court from a State court on the affidavit of any party plaintiff that he had reason to believe and did believe that, from prejudice or local influence, he was unable to obtain justice in said State court, the district court shall, on application of the other party, examine into the truth of said affidavit and the grounds thereof, and, unless it shall appear to the satisfaction of said court that said party will not be able to obtain justice in said State court, it shall cause the same to be remanded thereto. Whenever any cause shall be removed from any State court into any district court of the United States, and the district court shall decide that the cause was improperly removed, and order the same to be remanded to the State court from whence it came, such remand shall be immediately carried into execution, and no appeal or writ of error from the decision of the district court so remanding such cause shall be allowed: *Provided*, That no case arising under an act entitled "An act relating to the liability of common carriers by railroad to their employees in certain cases," approved April twenty-second, nineteen hundred and eight, or any amendment thereto, and brought in any State court of competent jurisdiction shall be removed to any court of the United States. (*36 Stat. L., 1094.*)

By one or more of several defendants when there is a separable controversy.

On account of prejudice or local influence.

Provisos.

Remand of suit as to defendants not prejudiced.

—or if prejudice does not exist.

No appeal from order remanding case improperly removed.

Employers' liability cases.

Formerly, when a case brought in a State court was removed to a Federal court, it was to the circuit court. The only change in the section consists in the substitution of the words "district court" for the words "circuit court," the circuit courts being abolished by section 289. Aside from this change, the section states the existing law; the use of the words "this title" for the words "the preceding section," making no change in the law. The proviso at the end of the section is a reenactment of a provision in section 6 of the act of April 22, 1908 (35 Stat. L., 66), as amended by the act of April 5, 1910 (36 Stat. L., 291).

WHAT CASES ARE REMOVABLE.

It is settled that no suit is removable under this section unless it be one that plaintiff could have brought originally in the circuit court under section 1 of the act of August 13, 1888, (now embodied in paragraph first, section 24, of this code, which see). Ex parte Wisner, 203 U. S., 449, 457; in re Winn, 213 U. S., 458.

POWER OF CONGRESS.

"The constitutional right of Congress to authorize the removal before trial of civil cases arising under the laws of the United States has long since passed

beyond doubt. It was exercised almost contemporaneously with the adoption of the Constitution, and the power has been in constant use ever since." . . . The jurisdiction of the federal courts "is essential to a uniform and consistent administration of national laws." . . . "The founders of the Constitution could never have intended to leave to the possibly varying decisions of the State courts what the laws of the government it established are, what rights they confer, and what protection shall be extended to those who execute them." Tennessee *v.* Davis, 100 U. S., 265, 266. Concerning the constitutional right of removal it has been said: "The Constitution declares the lines within which Congress may confer jurisdiction, but the ground and limit of actual jurisdiction to be exercised by the courts are to be found in the acts of Congress, and not in the Constitution." In re Cilley, 58 Fed., 977. Removal of suits from State courts depends on an act of Congress. Gumbel *v.* Pitkin, 124 U. S., 153.

REMOVAL ON GROUND OF FEDERAL QUESTION.

"A case cannot be removed from a State court into the Circuit Court of the United States, as one arising under the Constitution, laws or treaties of the United States, unless it appears by the plaintiff's statement of his own claim; and that, if it does not so appear, the want cannot be supplied by any statement in the petition for removal, or, in the subsequent pleadings." Minnesota *v.* Northern Securities Co., 194 U. S., 64. And "it is not enough, as the law now exists, that it appears that the defendant may find in the Constitution or laws of the United States some ground of defense." In re Winn, 213 U. S., 465. In this class of cases the citizenship of the parties is immaterial, and need not be alleged. Cummings *v.* Chicago, 188 U. S., 410; Lacroix *v.* Lyons, 27 Fed., 404. Whether the amount in controversy is material, see Shinney *v.* North Am. Sav., etc., Soc., 97 Fed., 9; Hallam *v.* Tillinghast, 75 Fed., 849. All the defendants must join in the application for removal. Chicago, R. I. & P. R. Co. *v.* Martin, 178 U. S., 248. Corporations operating under an act of Congress can remove a case under this section. Pacific R. R. Removal cases, 115 U. S., 1. But see O. S. L. & U. N. R. Co. *v.* Skottowe, 162 U. S., 490.

EMPLOYERS' LIABILITY CASES.

That the proviso limits the general right of removal authorized in other provisions of the section, and excludes a case under the employers' liability law where removal is sought on grounds of diverse citizenship, see Lee *v.* Toledo, St. L. & W. Ry. Co., 193 Fed., 685. See also McChesney *v.* Illinois Central R. Co., 197 Fed., 85.

REMOVAL ON GROUND OF DIVERSITY OF CITIZENSHIP.

When removal is sought upon this ground, it must be shown to have existed when the suit was commenced, as well as when the application for removal was made; otherwise the case should be remanded. Wilson *v.* Giberson, 124 Fed., 701; Kellam *v.* Keith, 144 U. S., 570. And the position of the parties does not determine this question, but the court may shift them according to their real interest. Harter Township *v.* Kernochan, 103 U. S., 566. Where the jurisdictional facts are not shown in the bill or petition, the court will not permit an amendment to supply the deficiency. Fife *v.* Whittell, 102 Fed., 537. But imperfect statements may be amended. Crehore *v.* Ohio & M. R. Co., 131 U. S., 240; Kinney *v.* Columbia S. & L. Assn., 191 U. S., 78. Parties cannot be fraudulently joined with the defendant to defeat removal. Free *v.* W. U. Tel. Co., 122 Fed., 311. Nor can there be such a joinder to secure removal. Pennsylvania R. Co. *v.* Allegheny Valley R. Co., 25 Fed., 113. On the question of consent of parties and waiver of objections to removal, see In re Moore, 209 U. S., 490.

Where the State is a party, there can be no removal on the ground of diverse citizenship. Postal Tel. Cable Co. *v.* Alabama, 155 U. S., 482. As to the status of corporations as "non residents," see Patch *v.* Wabash R. Co., 207 U. S., 277; Martin *v.* B. & O. R. Co., 151 U. S., 673. Where the plaintiff resists removal, see Puget Sound Sheet Metal Works *v.* Great N. Ry. Co., 195 Fed., 350.

REMOVAL BY ALIENS.

"It is very doubtful whether the term 'nonresident' is used in the removal act in any different sense than that of 'noncitizenship.' In that sense it would be in harmony with antecedent legislation on this subject. In that sense the single compound word 'nonresident' would include the right of removal to defendants, whether citizens of another State, or citizens or subjects of a foreign state. It has been repeatedly decided that the words 'citizen' and 'resident' are not synonymous terms." Purcell *v.* British Land, etc., Co., 42 Fed., 465. But see O'Conor *v.* Texas, 202 U. S., 501; Roberts *v.* Pacific & A. R. Co., 121 Fed., 785.

REMOVAL OF SEPARABLE CONTROVERSIES.

All the defendants need not join in the petition for removal. Cochran *v.* Montgomery Co., 199 U. S., 270. Where the controversy is separable between the plaintiff and one or more defendants, the case may be removed by the defendant having the separate controversy. Chicago, R. & P. R. Co. *v.* Martin, 178 U. S., 247. Whether the controversy is separable will be determined from the allegations of the bill. Graves *v.* Corbin, 132 U. S., 585; Elkins *v.* Howell, 140 Fed., 157. But one of several tort feasors cannot remove on the ground of a separable controversy. C. & O. R. Co. *v.* Dixon, 179 U. S., 131.

REMOVAL ON GROUND OF LOCAL PREJUDICE.

"The words "any defendant, being such citizen of another State, may remove," implied that there might be defendants who were not citizens of another State and yet the cause be removable, but while the words, standing alone, are susceptible of that construction, we think it was not intended to change the meaning of the terms as previously determined (by the decisions under the act of 1789, and so on down), and that the class of cases removable on the ground of prejudice and local influence is confined to those in which there is a controversy between a citizen or citizens of the State in which the suit is pending and a citizen or citizens of another or other States, and that the clause did not include cases wherein the controversy was partly between citizens of the same state." Cochran *v.* Montgomery Co., 199 U. S., 272. As to the use of the words "any defendant," in this same clause, see same case, p. 273. The amount and manner of proof required to show local prejudice is left to the discretion of the court. In re Pennsylvania Co., 137 U. S., 457.

JURISDICTION, NATURE OF, ETC.

"The power of removal is certainly not, in strictness of language, an exercise of original jurisdiction; it presupposes an exercise of original jurisdiction to have attached elsewhere." Martin *v.* Hunter's Lessee, 1 Wheat., 304, 349. The jurisdiction of the Federal court attaches upon the filing of the bond and petition, and the jurisdiction of the State court is at an end. Crehore *v.* Ohio, etc., Ry. Co., 131 U. S., 243. But the State court "is not bound to surrender its jurisdiction of a suit on a petition for removal until a case has been made which on its face shows that the petitioner has a right to the transfer." Stone *v.* South Carolina, 117 U. S., 430. "Causes cannot be removed to the Circuit Court for a review of the action of the State court, but only for trial." Vannevar *v.* Bryant, 11 Wall., 43. That the judgment of the Circuit Court remanding a case to the State court is final and conclusive, see In re Pennsylvania Co., 137 U. S., 454; Gurnee *v.* Patrick Co., 137 U. S., 141; Missouri Pac. Ry. Co. *v.* Fitzgerald, 160 U. S., 582.

Procedure for removal.

13 Aug., 1888, 25 Stat. L., 434, c. 866, s. 3; 1 Supp., 613.

SEC. 29. Whenever any party entitled to remove any suit mentioned in the last preceding section, except suits removable on the ground of prejudice or local influence, may desire to remove such suit from a State court to the district court of the United States, he may make and file a petition, duly verified, in such suit in such State court at the time, or any time before the defendant is required by the laws of the State or the rule of the State court in which such suit is brought to answer or plead to the declaration or complaint of the plaintiff, for the removal of such suit into the district court to be held in the district where such suit is pending, and shall make and file therewith a bond, with good and sufficient surety, for his or their entering in such district court, within thirty days from the date of filing said petition, a certified copy of the record in such suit, and for paying all costs that may be awarded by the said district court if said district court shall hold that such suit was wrongfully or improperly removed thereto, and also for their appearing and entering special bail in such suit if special bail was originally requisite therein. It shall then be the duty of the State court to accept said petition and bond and proceed no further in such suit. Written notice of said petition and bond for removal shall be given the adverse party or parties prior to filing the same. The said copy being entered within said thirty days as aforesaid in said district court of the United States, the parties so removing the said cause shall, within thirty days there-

Petition, etc.

Bond.

Proceedings stayed.

after, plead, answer, or demur to the declaration or complaint in said cause, and the cause shall then proceed in the same manner as if it had been originally commenced in the said district court. (*36 Stat. L., 1095.*)

This section is a re-enactment of existing law, with the words "district court" substituted for the words "circuit court," and the elimination of the word "that" at the beginning of the section, and the word "and" at the beginning of the last section. The provisions that the petition shall be "duly verified," that the bond shall require the filing of a "certified copy" of the record "within thirty days from the date of filing said petition;" that "written notice of said petition and bond for removal shall be given the adverse party or parties prior to filing the same;" that the "parties so removing the said cause shall, within thirty days thereafter, plead, answer, or demur to the declaration or complaint in said cause" appear for the first time. The exception at the beginning of the section is made more specific by the use of the words "suits removable on the ground of prejudice or local influence."

The application for removal must be made when the plea is due. Kansas City R. Co. *v.* Daugherty, 138 U. S., 303. When the petition and bond are filed the State court is without authority to proceed further. Marshall *v.* Holmes, 141 U. S., 595. The record must show a *prima facie* case. Stone *v.* South Carolina, 117 U. S., 342. "If the State court refuses to make the order of removal on the showing made by the face of the record, the defendant may nevertheless, within a prescribed time, enter a copy of the record as it stood, on the filing of the petition, in the proper Federal court and have the case docketed there." Donovan *v.* Wells, Fargo Co., 168 Fed., 363, 366. See also Texas and Pacific Ry. Co. *v.* Eastin, 214 U. S., 153. As to the requirement for written notice of petition and bond, see Goins *v.* Southern Pac. Co., 198 Fed., 432

Suits under grants of land from different States.

R. S., s. 647. 13 Aug., 1888, 25 Stat. L., 435, c. 866, s. 3; 1 Supp., 613.

SEC. 30. If in any action commenced in a State court the title of land be concerned, and the parties are citizens of the same State and the matter in dispute exceeds the sum or value of three thousand dollars, exclusive of interest and costs, the sum or value being made to appear, one or more of the plaintiffs or defendants, before the trial, may state to the court, and make affidavit if the court require it, that he or they claim, and shall rely upon, a right or title to the land under a grant from a State, and produce the original grant, or an exemplification of it, except where the loss of public records shall put it out of his or their power, and shall move that any one or more of the adverse party inform the court whether he or they claim a right or title to the land under a grant from some other State, the party or parties so required shall give such information, or otherwise not be allowed to plead such grant or give it in evidence upon the trial. If he or they inform the court that he or they do claim under such grant, any one or more of the party moving for such information may then, on petition and bond, as hereinbefore mentioned in this chapter, remove the cause for trial to the district court of the United States next to be holden in such district; and any one of either party removing the cause shall not be allowed to plead or give evidence of any other title than that by him or them stated as aforesaid as the ground of his or their claim. (*36 Stat. L., 1096.*)

This section was taken from the latter portion of section 3 of the act of August 13, 1888, amending that section of the act of March 3, 1875, which became a part of section 647, Revised Statutes. The change from existing law is in the substitution of the words "district court" for "circuit court," the addition of the words "the court" in the first clause of the last sentence, in substituting the word "chapter" for "act;" and in raising the jurisdictional amount from $2,000 to $3,000.

The jurisdiction of the Federal courts is not affected by the fact that the States were under the same sovereignty at the time the grant was made. Pawlet *v.* Clark, 9 Cranch, 292.

"Congress has not conferred jurisdiction on the Circuit Courts over controversies between citizens of different States because, apart from diversity of citizenship, they may have claimed title by grants from different States, even if it had power to do so." Stevenson *v.* Fain, 195 U. S., 170.

In connection with this section see Gaines *v.* Fuentes, 92 U. S., 24.

Removal of causes against persons denied any civil right, etc.

R. S., s. 641.

SEC. 31. When any civil suit or criminal prosecution is commenced in any State court, for any cause whatsoever, against any person who is denied or can not enforce in the judicial tribunals of the State, or in the part of the State where such suit or prosecution is pending, any right secured to him by any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction of the United States, or against any officer, civil or military, or other person, for any arrest or imprisonment or other trespasses or wrongs made or committed by virtue of or under color of authority derived from any law providing for equal rights as aforesaid, or for refusing to do any act on the ground that it would be inconsistent with such law, such suit or prosecution may, upon the petition of such defendant, filed in said State court at any time before the trial or final hearing of the cause, stating the facts and verified by oath, be removed for trial into the next district court to be held in the district where it is pending. Upon the filing of such petition all further proceedings in the State courts shall cease, and shall not be resumed except as hereinafter provided. But all bail and other security given in such suit or prosecution shall continue in like force and effect as if the same had proceeded to final judgment and execution in the State court. It shall be the duty of the clerk of the State court to furnish such defendant, petitioning for a removal, copies of said process against him, and of all pleadings, depositions, testimony, and other proceedings in the case. If such copies are filed by said petitioner in the district court on the first day of its session, the cause shall proceed therein in the same manner as if it had been brought there by original process; and if the said clerk refuses or neglects to furnish such copies, the petitioner may thereupon docket the case in the district court, and the said court shall then have jurisdiction therein, and may, upon proof of such refusal or neglect of said clerk, and upon reasonable notice to the plaintiff, require the plaintiff to file a declaration, petition, or complaint in the cause; and, in case of his default, may order a nonsuit and dismiss the case at the costs of the plaintiff, and such dismissal shall be a bar to any further suit touching the matter in controversy. But if, without such refusal or neglect of said clerk to furnish such copies and proof thereof, the petitioner for removal fails to file copies in the district court, as herein provided, a certificate, under the seal of the district court, stating such failure, shall be given, and upon the production thereof in said State court the cause shall proceed therein as if no petition for removal had been filed. (*36 Stat. L., 1096.*)

Proceedings stayed.

Bail, etc., continued.

Refusal of clerk to furnish copies.

Dismissal.

The only change in this section consists in the substitution of the words "district court" for the words "circuit court."

In Kentucky *v.* Powers, 201 U. S., 1, 30, 31, it is said:

"The words in section 641, "who is denied or cannot enforce in the judicial tribunals of the State, or in the part of the State where such suit or prosecution is pending, any right secured to him by any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction of the United States"—did not give the right of *removal*, unless the constitution or laws of the State in which the criminal prosecution was pending denied or prevented the enforcement in the judicial tribunals of such State of the equal rights of the accused as secured by any law of the United States." They do not provide for removal "where the alleged discrimination against the accused, in respect to his equal rights, was due to the illegal or corrupt acts of administrative officers, unauthorized by the constitution or laws of the State, as interpreted by its highest court." Nor has the Federal court been "authorized to take cognizance of a criminal prosecution commenced in a State court for an alleged crime against the State, where the constitution and laws of such State do not permit discrimination against the accused in respect of such rights as are specified in the first clause of section 641." Idem, p. 35.

When petitioner is in actual custody of State court.

R. S., s. 642.

SEC. 32. When all the acts necessary for the removal of any suit or prosecution, as provided in the preceding section, have been performed, and the defendant petitioning for such removal is in actual custody on process issued by said State court, it shall be the duty of the clerk of said district court to issue a writ of habeas corpus cum causa, and of the marshal, by virtue of said writ, to take the body of the defendant into his custody, to be dealt with in said district court according to law and the orders of said court, or, in vacation, of any judge thereof; and the marshal shall file with or deliver to the clerk of said State court a duplicate copy of said writ. (*36 Stat. L., 1097.*)

The words "district court" have been substituted for the words "circuit court" occurring in the original section.

"The removal of the case out of the jurisdiction of the State court and into the exclusive jurisdiction of the Circuit Court takes place, without any order of the Circuit Court, as soon as the State court, by the service upon it, or upon its clerk, of the appropriate process, whether *certiorari* or *habeas corpus cum causa*, has notice of the filing of the petition in the Circuit Court." Virginia *v.* Paul, 148 U. S., 115.

This section provides an additional and summary method of docketing the case in the Circuit Court when the clerk of the State court is delinquent in furnishing copies of the proceedings. Ex parte Wells, 3 Woods, 128.

See also Kentucky *v.* Powers, 201 U. S., 1.

Suits and prosecutions against revenue officers, etc.

R. S., s. 643.
3 Mar., 1875, 18 Stat. L., 401, c. 130, s. 8; 1 Supp., 76.
8 Feb., 1894, 28 Stat. L., 36, c. 25; 2 Supp., 171.

SEC. 33. When any civil suit or criminal prosecution is commenced in any court of a State against any officer appointed under or acting by authority of any revenue law of the United States now or hereafter enacted, or against any person acting under or by authority of any such officer, on account of any act done under color of his office or of any such law, or on account of any right, title, or authority claimed by such officer or other person under any such law; or is commenced against any person holding property or estate by title derived from any such officer, and affects the validity of any such revenue law; or when any suit is commenced against any person for or on account of anything done by him while an officer of either House of Congress in the discharge of his official duty, in executing any order of such House, the said suit or prosecution may, at any time before the trial or final hearing thereof, be removed for trial into the district court next to be holden in the district where the same is pending, upon the petition of such defendant to said district court, and in the following manner: Said petition shall set forth the nature of the suit or prosecution and be verified by affidavit, and, together with a certificate signed by an attorney or counselor at law of some court of record of the State where such suit or prosecution is commenced, or of the United States, stating that, as counsel for the petitioner, he has examined the proceedings against him and carefully inquired into all the matters set forth in the petition, and that he believes them to be true, shall be presented to the said district court, if in session, or if it be not, to the clerk thereof at his office, and shall be filed in said office. The cause shall thereupon be entered on the docket of the district court, and shall proceed as a cause originally commenced in that court; but all bail and other security given upon such suit or prosecution shall continue in like force and effect as if the same had proceeded to final judgment and execution in the State court. When the suit is commenced in the State court by summons, subpœna, petition, or other process except capias, the clerk of the district court shall issue a writ of certiorari to the State court, requiring it to send to the district court the record and proceedings in the cause. When it is commenced by capias or by any other similar form or [of] proceeding by which a personal arrest is ordered, he shall issue a writ of habeas corpus cum causa, a duplicate of which shall be delivered to the clerk of the State court, or left at his office, by the marshal of the district or his

Officer of Congress.

Petition, etc.

Certiorari to State court.

Capias proceedings.

Duty of marshal.

deputy, or by some person duly authorized thereto; and thereupon it shall be the duty of the State court to stay all further proceedings in the cause, and the suit or prosecution, upon delivery of such process, or leaving the same as aforesaid, shall be held to be removed to the district court, and any further proceedings, trial, or judgment therein in the State court shall be void. If the defendant in the suit or prosecution be in actual custody on mesne process therein, it shall be the duty of the marshal, by virtue of the writ of habeas corpus cum causa, to take the body of the defendant into his custody, to be dealt with in the cause according to law and the order of the district court, or, in vacation, of any judge thereof; and if, upon the removal of such suit or prosecution, it is made to appear to the district court that no copy of the record and proceedings therein in the State court can be obtained, the district court may allow and require the plaintiff to proceed de novo and to file a declaration of his cause of action, and the parties may thereupon proceed as in actions originally brought in said district court. On failure of the plaintiff so to proceed, judgment of non prosequitur may be rendered against him, with costs for the defendant. (*36 Stat L., 1097.*)

This section combines the provisions of section 643, Revised Statutes, and the first part of section 8 of the act of March 3, 1875, omitting that portion repealed by the act of February 8, 1894. The words "or when any suit is commenced," in the first part of the section, are introduced solely for the purpose of properly combining the two acts. The only change made in existing law consists in the substitution of the words "district court" for the words "circuit court" wherever they occur in the section, the circuit courts being abolished by section 289.

As to the general purpose of this section, see Johnson *v.* Wells, 98 Fed., 3.

This law was held to be constitutional in Tennessee *v.* Davis, 100 U. S., 257. The action against the officer must have "some rational connection with official duties under a "revenue law." People's U. S. Bank *v.* Goodwin, 162 Fed., 937. The section applies to marshals and deputy marshals when engaged in the enforcement of a revenue law. Davis *v.* South Carolina, 107 U. S., 597. Or in executing an attachment issuing from a Circuit Court. Bock *v.* Perkins, 139 U. S., 628. And to a collector of customs. Cleveland, Columbus, etc., R. Co., *v.* McClung, 119 U. S., 454; Thomas, etc., Co. v. Barnett, 144 Fed., 338. That a case is not "commenced" before the indictment is found, see, Virginia *v.* Paul, 148 U. S., 114.

See also, Matter of Strauss, 197 U. S., 332.

Removal of suits by aliens.

R. S., s. 644.

SEC. 34. Whenever a personal action has been or shall be brought in any State court by an alien against any citizen of a State who is, or at the time the alleged action accrued was, a civil officer of the United States, being a non-resident of that State wherein jurisdiction is obtained by the State court, by personal service of process, such action may be removed into the district court of the United States in and for the district in which the defendant shall have been served with the process, in the same manner as now provided for the removal of an action brought in a State court by the provisions of the preceding section. (*36 Stat. L., 1098*).

The only change made in this section is in the use of the words "district court" in place of the words "circuit court."

When copies of records are refused by clerk of State court.

R. S., s. 645.

SEC. 35. In any case where a party is entitled to copies of the records and proceedings in any suit or prosecution in a State court, to be used in any court of the United States, if the clerk of said State court, upon demand, and the payment or tender of the legal fees, refuses or neglects to deliver to him certified copies of such records and proceedings, the court of the United States in which such records and proceedings are needed may, on proof by affidavit that the clerk of said State court has refused or neglected to deliver copies thereof, on demand as aforesaid, direct such record to be supplied by affidavit or otherwise, as the circumstances of the case may require and allow; and thereupon such proceedings, trial, and judgment may be had in

the said court of the United States, and all such processes awarded, as if certified copies of such records and proceedings had been regularly before the said court. (*36 Stat. L., 1098.*)

This section is a re-enactment of existing law without change.

Previous attachment bonds, orders, etc., remain valid.

R. S., s. 646.
3 Mar., 1875, 18 Stat. L., 471, c. 137, s. 4; 1 Supp., 83.

SEC. 36. When any suit shall be removed from a State court to a district court of the United States, any attachment or sequestration of the goods or estate of the defendant had in such suit in the State court shall hold the goods or estate so attached or sequestered to answer the final judgment or decree in the same manner as by law they would have been held to answer final judgment or decree had it been rendered by the court in which said suit was commenced. All bonds, undertakings, or security given by either party in such suit prior to its removal shall remain valid and effectual notwithstanding said removal; and all injunctions, orders, and other proceedings had in such suit prior to its removal shall remain in full force and effect until dissolved or modified by the court to which such suit shall be removed. (*36 Stat. L., 1098.*)

This section was drawn from section 4 of the act of March 3, 1875, which superseded section 646, Revised Statutes. The only material change consists in the substitution of the words "district court" for the words "circuit court."

Concerning this provision the Supreme Court has said: "The provision of section 4 of the act of March 3, 1875, declares orders of the State court, in a case afterwards removed, to be in force until dissolved or modified by the circuit court. This fully recognizes the power of the latter court over such orders. And it was not intended to enact that an order made in the State court, which affected or might affect the mode of trial yet to be had, could change or modify the express direction of an act of Congress on that subject." Ex parte Fisk, 113 U. S., 725. See also Bills *v.* New Orleans, etc., R. Co., 13 Blatchf., 227; Clark *v.* Wells, 203 U. S., 171.

Suits improperly in district court may be dismissed or remanded.

3 Mar., 1875, 18 Stat. L., 472, c. 137, s. 5; 1 Supp., 83.
13 Aug., 1888, 25 Stat. L., 436, c. 866, s. 6; 1 Supp., 614.

SEC. 37. If in any suit commenced in a district court, or removed from a State court to a district court of the United States, it shall appear to the satisfaction of the said district court, at any time after such suit has been brought or removed thereto, that such suit does not really and substantially involve a dispute or controversy properly within the jurisdiction of said district court, or that the parties to said suit have been improperly or collusively made or joined, either as plaintiffs or defendants, for the purpose of creating a case cognizable or removable under this chapter, the said district court shall proceed no further therein, but shall dismiss the suit or remand it to the court from which it was removed, as justice may require, and shall make such order as to costs as shall be just. (*36 Stat. L., 1098.*)

The substitution of the word "district" for the word "circuit" is the only change made in this section.

WHEN SUITS DISMISSED.

"A suit cannot properly be dismissed by a circuit court as not involving a controversy of an amount sufficient to come within its jurisdiction unless the facts, when made to appear on the record, create a legal certainty of that conclusion." Put-In-Bay Waterworks, etc., Waterworks Co. *v.* Ryan, 181 U. S., 431. "The provision does not give countenance to the idea that the suit or proceeding is to be retained in the circuit court till brought to a formal adjudication on the merits, when, at that ultimate stage, the court must say that the case is not within its jurisdiction, after the party successfully challenging the jurisdiction has been harassed by expense and injured by delay. But it means what it says, that the dismissal or remanding 'shall' be made whenever, 'at any time' after the suit is brought or removed to the circuit court, it shall appear to the satisfaction of that court that there is, really and substantially, no dispute or controversy of which it has jurisdiction, in the sense above pointed out." Rosenbaum *v.* Bauer, 120 U. S., 459.

PARTIES COLLUSIVELY JOINED.

"In extending a long way the jurisdiction of the courts of the United States, Congress was specially careful to guard against the consequences of collusive transfers to make parties, and imposed the duty on the court, on its own motion,

without waiting for the parties, to stop all further proceedings and dismiss the suit the moment anything of the kind appeared. This was for the protection of the court as well as parties against frauds upon its jurisdiction." Lehigh Mining & Mfg. Co. *v.* Kelly, 160 U. S., 240.

DIVERSE CITIZENSHIP.

Where an alien is nominally a party, but the case is "really and substantially" between citizens of the same State, it is not "properly within the jurisdiction" of the court. Cashman *v.* Amador, 118 U. S., 61. See also Cates *v.* Allen, 149 U. S., 460; Rones *v.* Katalla Co., 182 Fed., 946.

REMANDING CASE.

The district court declined to remand a case over which the circuit court had acquired jurisdiction, on the ground that less than $3,000 was involved, because of section 299 of this code. Lincoln *v.* Robinson et al., 194 Fed., 571.

Proceedings in suits removed.

3 Mar., 1875, 18 Stat. L., 472, c. 137, s. 6; 1 Supp., 84.

SEC. 38. The district court of the United States shall, in all suits removed under the provisions of this chapter, proceed therein as if the suit had been originally commenced in said district court, and the same proceedings had been taken in such suit in said district court as shall have been had therein in said State court prior to its removal. (*36 Stat. L., 1098.*)

This section re-enacts section 6 of the act of March 3, 1875, and substitutes the word "district" for the word "circuit," and the word "chapter" for "act."

"The purpose of this section is, obviously, that all proceedings after removal shall be as if the suit was originally brought in the United States Circuit Court, and all had in the State court before removal shall stand on the same footing." Falls Wire Mfg. Co. *v.* Broderick, 6 Fed., 654.

Time for filing record; return of record, how enforced.

3 Mar., 1875, 18 Stat. L., 472, c. 137, s. 7; 1 Supp., 84.

SEC. 39. In all causes removable under this chapter, if the clerk of the State court in which any such cause shall be pending shall refuse to any one or more of the parties or persons applying to remove the same, a copy of the record therein, after tender of legal fees for such copy, said clerk so offending shall, on conviction thereof in the district court of the United States to which said action or proceeding was removed, be fined not more than one thousand dollars, or imprisoned not more than one year, or both. The district court to which any cause shall be removable under this chapter shall have power to issue a writ of certiorari to said State court commanding said State court to make return of the record in any such cause removed as aforesaid, or in which any one or more of the plaintiffs or defendants have complied with the provisions of this chapter for the removal of the same, and enforce said writ according to law. If it shall be impossible for the parties or persons removing any cause under this chapter, or complying with the provisions for the removal thereof, to obtain such copy, for the reason that the clerk of said State court refuses to furnish a copy, on payment of legal fees, or for any other reason, the district court shall make an order requiring the prosecutor in any such action or proceeding to enforce forfeiture or recover penalty, as aforesaid, to file a copy of the paper or proceeding by which the same was commenced, within such time as the court may determine; and in default thereof the court shall dismiss the said action or proceeding; but if said order shall be complied with, then said district court shall require the other party to plead, and said action or proceeding shall proceed to final judgment. The said district court may make an order requiring the parties thereto to plead de novo; and the bond given, conditioned as aforesaid, shall be discharged so far as it requires copy of the record to be filed as aforesaid. (*36 Stat. L., 1099.*)

Certiorari to State court.

Order to prosecutor.

Proceedings.

In addition to using the word "chapter" for "act," and "district" for "circuit," and breaking the section into more sentences, the only other changes consist in the omission of redundant language from the penal clause and of the first section of the act which this section supersedes.

POWER OF FEDERAL COURT.

"Where, upon the removal of a cause from a State court, the copy of the record is not filed within the time fixed by statute, it is within the legal discretion of the federal court to remand the cause, and the order remanding it for that reason should not be disturbed unless it clearly appears that the discretion with which the court is invested has been improperly exercised." St. Paul & Chicago R. Co. *v.* McLean, 108 U. S., 212. Whether the federal court shall retain jurisdiction, "or dismiss or remand the action because of the failure to file the necessary transcript," is for that court to determine. Steamship Co. *v.* Tugman, 106 U. S., 122. That such court has jurisdiction to take any extraordinary proceedings required for the protection of any party to the cause, see Goldberg *v.* German Ins. Co., 152 Fed., 831. On the extent of the power of the federal court over the case between the time of the filing of the petition for removal and the coming of the first day of the next session of the court, see Hamilton *v.* Fowler, 83 Fed., 321.

CHAPTER FOUR.

DISTRICT COURT—MISCELLANEOUS PROVISIONS.

Capital offenses, where triable.

R. S., s. 729.

SEC. 40. The trial of offenses punishable with death shall be had in the county where the offense was committed, where that can be done without great inconvenience. (*36 Stat. L., 1100.*)

This section is a re-enactment of existing law.

Jurisdiction of crime committed in a fort under the exclusive jurisdiction of the United States, U. S. *v.* Cornell, 2 Mason, 91. Trial for treason, U. S. *v.* Fries, 3 Dall. (Pa.), 515. See also Rosencrans *v.* U. S., 165 U. S., 260.

Offenses on the high seas, etc., where triable.

R. S., s. 730.
4 Sept., 1890, 26 Stat. L., 424, c. 874, ss. 1, 2, 1 Supp., 799.

SEC. 41. The trial of all offenses committed upon the high seas, or elsewhere out of the jurisdiction of any particular State or district, shall be in the district when the offender is found, or into which he is first brought. (*36 Stat. L., 1100.*)

This section made no change in existing law.

On the construction of this section in reference to its application to offenses committed on the high seas, see U. S. *v.* Rodgers, 150 U. S., 249. On navigable rivers, see In re Garnett, 141 U. S., 1. Crimes committed against the laws of the United States, out of the limits of a State, are not local, but may be tried at such place as Congress shall designate by law. As applicable to Hawaii, see Wynne *v.* U. S., 217 U. S., 234. Cook *v.* U. S., 138 U. S., 182. It was held in this case that the Circuit Court had jurisdiction of an indictment for murder, charged to have been committed in the country known as "No Man's Land." Murder committed upon guano islands "which have been determined by the President to appertain to the United States," is a case coming under this section. Jones *v.* U. S., 137 U. S., 202.

Offenses begun in one district and completed in another.

R. S., s. 731.

SEC. 42. When any offense against the United States is begun in one judicial district and completed in another, it shall be deemed to have been committed in either, and may be dealt with, inquired of, tried, determined, and punished in either district, in the same manner as if it had been actually and wholly committed therein. (*36 Stat. L., 1100.*)

No change in the law was made by this section.

"The constitutional requirement is that the crime shall be tried in the State and District where committed, not necessarily in the State or District where the party committing it happened to be at the time." Burton *v.* U. S., 202 U. S., 387; Hyde *v.* U. S., 225 U. S., 362. When an offense is committed by a communication through the post office, he is punishable at the place where the letter is mailed or where it is received. In re Palliser, 136 U. S., 266. As to the application of this section to the crime of murder when the death occurs in a place other than where the mortal stroke was given, see Ball *v.* U. S., 140 U. S., 136. That the criminal himself makes the venue of his trial, see Brown *v.* Elliott, 225 U. S., 402.

Suits for penalties and forfeitures, where brought.

R. S., s. 732.

SEC. 43. All pecuniary penalties and forfeitures may be sued for and recovered either in the district where they accrue or in the district where the offender is found. (*36 Stat. L., 1100.*)

This section re-enacts existing law without change.

As to the scope of this section, see Pentlarge *v.* Kirby, 19 Fed., 501. See also U. S. *v.* Craig, 28 Fed., 795; Lees *v.* U. S., 150 U. S., 476.

Suits for internal-revenue taxes; where brought.

R. S., s. 733.

SEC. 44. Taxes accruing under any law providing internal revenue may be sued for and recovered either in the district where the liability for such tax occurs or in the district where the delinquent resides. (*36 Stat. L., 1100.*)

No change in existing law was made by this section.

That the provisions of this section are restrictive, see U. S. *v.* New York, etc. R. Co., 10 Ben. 144, 27 Fed. Cas., 189.

Seizures, where cognizable.

R. S., s. 734.

SEC. 45. Proceedings on seizures made on the high seas, for forfeiture under any law of the United States, may be prosecuted in any district into which the property so seized is brought and proceedings instituted. Proceedings on such seizures made within any district shall be prosecuted in the district where the seizure is made, except in cases where it is otherwise provided. (*36 Stat. L., 1100.*)

The words "made on the high seas" have been transposed to follow the words "proceedings on seizures," as it is the seizures, and not the laws, that are made on the high seas. No other change has been made.

"The jurisdiction in these cases, is given to the court of the district, not where the offence was committed, but where the seizure is made. But where the seizure is made on the high seas, the jurisdiction is conferred upon no particular district court, and it may, therefore, be exercised by the court of any district into which the property is carried, and there proceeded against." The Merino, 9 Wheat., 402. See also U. S. *v.* Riddle, 5 Cranch, 310; In re Cooper, 143 U. S., 498.

Capture of insurrectionary property, where cognizable.

R. S., s. 735.

SEC. 46. Proceedings for the condemnation of any property captured, whether on the high seas or elsewhere out of the limits of any judicial district, or within any district, on account of its being purchased or acquired, sold or given, with intent to use or employ the same, or to suffer it to be used or employed, in aiding, abetting, or promoting any insurrection against the Government of the United States, or knowingly so used or employed by the owner thereof, or with his consent, may be prosecuted in any district where the same

may be seized, or into which it may be taken and proceedings first instituted. (*36 Stat. L., 1100.*)

This section is a re-enactment of existing law.

Considering the section of the act of 1861, from which this provision originated, the Supreme Court has said: "It is sufficiently obvious that the general object of the enactment was to promote the suppression of rebellion by subjecting property employed in aid of it with the owner's consent, to confiscation. It extended to all descriptions of property, real or personal, on land or water." . . . "We think the construction which, as we understand, has been generally adopted in the District and Circuit Courts in cases of proceedings for the condemnation of real estate or property on land is substantially correct. That construction treats the grant of jurisdiction in admiralty as a grant of jurisdiction of the 'proceedings of condemnation' to the Circuit or District court according to the amount in suit; with power to both courts to shape those proceedings in general conformity to the practice in admiralty." Union Ins. Co. *v.* U. S., 6 Wall., 763. See Oakes *v.* U. S., 174 U. S., 790.

Certain seizures cognizable in any district into which the property is taken.

R. S., s. 564.

SEC. 47. Proceedings on seizures for forfeiture of any vessel or cargo entering any port of entry which has been closed by the President in pursuance of law, or of goods and chattels coming from a State or section declared by proclamation of the President to be in insurrection into other parts of the United States, or of any vessel or vehicle conveying such property, or conveying persons to or from such State or section, or of any vessel belonging, in whole or in part, to any inhabitant of such State or section, may be prosecuted in any district into which the property so seized may be taken and proceedings instituted; and the district court thereof shall have as full jurisdiction over such proceedings as if the seizure was made in that district. (*36 Stat. L., 1100.*)

Aside from the omission of the word "court" after the word "district," as being redundant, no changes were made by this section.

The act of July 13, 1861, was held in 1865 not to be a temporary act in The Reform, 3 Wall., 268. As to the character of property subject to forfeiture, see Gay's Gold, 13 Wall., 362. That the law of 1861 did not override or displace the law of prize, see The Hampton, 13 Wall., 372. That it is the preliminary seizure which brings the property within the reach of legal process, see U. S. *v.* Stevenson, 3 Ben. (U. S.), 119; U. S. *v.* Winchester, 99 U. S., 376. As to the purpose and effect of the act of 1861, see Matthews *v.* McStea, 91 U. S., 12; Burbank *v.* Conrad, 96 U. S., 294; Dow *v.* Johnson, 100 U. S., 181. See also Hamilton *v.* Dillin, 21 Wall., 88.

Patents; jurisdiction in district in which defendant resides; if partnership or corporation, in district of place of business; service of process.

3 Mar., 1897, 29 Stat. L., 695, c. 395; 2 Supp., 615.

SEC. 48. In suits brought for the infringement of letters patent the district courts of the United States shall have jurisdiction, in law or in equity, in the district of which the defendant is an inhabitant, or in any district in which the defendant, whether a person, partnership, or corporation, shall have committed acts of infringement and have a regular and established place of business. If such suit is brought in a district of which the defendant is not an inhabitant, but in which such defendant has a regular and established place of business, service of process, summons, or subpœna upon the defendant may be made by service upon the agent or agents engaged in conducting such business in the district in which suit is brought. (*36 Stat. L., 1100.*)

The only change made in this section is in the substitution of the word "district" for "circuit."

That this provision applies only to defendants who are inhabitants of some district within the United States, and not to patent suits against aliens, who may be sued in any district where the defendant may be found, see United Shoe Mach. Co. *v.* Duplessis Ind. Shoe Mach. Co., 133 Fed., 930. As to how the place of business should be alleged, see Thomson-Houston Elec. Co. *v.* Electose Mfg. Co., 155 Fed., 543. That the defendant should have a place of business in the district only at the time suit is brought, see Underwood Typewriter Co. *v.* Fox Typewriter Co., 158 Fed., 476.

Proceedings to enjoin Comptroller of the Currency.

R. S., s. 736.

SEC. 49. All proceedings by any national banking association to enjoin the Comptroller of the Currency, under the provisions of any law relating to national banking associations, shall be had in the district where such association is located. (*36 Stat. L., 1100.*)

Re-enactment of existing law.

When a part of several defendants can not be served.

R. S., s. 737.

SEC. 50. When there are several defendants in any suit at law or in equity, and one or more of them are neither inhabitants of nor found within the district in which the suit is brought, and do not voluntarily appear, the court may entertain jurisdiction, and proceed to the trial and adjudication of the suit between the parties who are properly before it; but the judgment or decree rendered therein shall not conclude or prejudice other parties not regularly served with process nor voluntarily appearing to answer; and non-joinder of parties who are not inhabitants of nor found within the district, as aforesaid, shall not constitute matter of abatement or objection to the suit. (*36 Stat. L., 1101.*)

This section made no change in existing law.

PARTIES TO A SUIT.

Parties to a suit in equity have been divided by the Supreme Court into three classes, as follows: 1. "Formal parties. 2. Persons having an interest in the controversy, and who ought to be made parties, in order that the court may act on that rule which requires it to decide on, and finally determine the entire controversy; and do complete justice, by adjusting all the rights involved in it. These persons are commonly termed necessary parties; but if their interests are separable from those of the parties before the court, so that the court can proceed to a decree, and do complete and final justice, without affecting the other persons not before the court, the latter are not indispensable parties. 3. Persons who not only have an interest in the controversy, but an interest of such a nature that a final decree cannot be made without either affecting that interest, or leaving the controversy in such a condition that its final determination may be wholly inconsistent with equity and good conscience." Minnesota *v.* Northern Securities Co., 184 U. S., 236, where it was said that this section is but a "legislative affirmance of the rule previously established" by the decisions of the Supreme Court.

The court cannot proceed without the presence of an indispensable party. Shields *v.* Barrow, 17 How., 130. Nor to make any decree affecting the interests of absent parties whose rights would be in effect determined. California *v.* Southern Pacific Co., 157 U. S., 257. But where persons "who might otherwise be deemed necessary parties to the suit, cannot be made parties by reason of their being out of the jurisdiction of the court, or incapable otherwise of being made parties, or because their joinder would oust the jurisdiction as to the parties before it, the court may in its discretion proceed in the cause without making such persons parties, and in such cases the decree shall be without prejudice to the rights of the absent parties." Fisher *v.* Shropshire, 147 U. S., 145.

Civil suits; where to be brought.

R. S., s. 739.
13 Aug., 1888, 25 Stat. L., 434, c. 866; 1 Supp., 611.

SEC. 51. Except as provided in the five succeeding sections, no person shall be arrested in one district for trial in another, in any civil action before a district court; and, except as provided in the six succeeding sections, no civil suit shall be brought in any district court against any person by any original process or proceeding in any other district than that whereof he is an inhabitant; but where the jurisdiction is founded only on the fact that the action is between citizens of different States, suit shall be brought only in the district of the residence of either the plaintiff or the defendant. (*36 Stat. L., 1101.*)

This section embraces the provisions of section 739, Revised Statutes, as modified by the act of August 13, 1888, and re-enacts existing law, except for changes required by the revision.

Where jurisdiction depends on diversity of citizenship, suit may be brought only in the district of the residence of the plaintiff or defendant. Greeley *v.* Lowe, 155 U. S., 68; Doscher *v.* U. S. Pipe Line Co., 185 Fed., 959.

Held to apply to a suit in equity in Butterworth *v.* Hill, 114 U. S., 128.

"Diversity of citizenship confers jurisdiction irrespective of the cause of action." Pope *v.* Louisville, etc., Ry. Co., 173 U. S., 576. But will not give jurisdiction "to render a judgment *in personam* where neither plaintiff nor defendant is an inhabitant of the district in which the suit is brought and the defendant appears specially and objects to the jurisdiction." Ladew *v.* Tennessee Copper Co., 218 U. S., 357.

Suits in States containing more than one district.

R. S., s. 740.

SEC. 52. When a State contains more than one district, every suit not of a local nature, in the district court thereof, against a single defendant, inhabitant of such State, must be brought in the district where he resides; but if there are two or more defendants, residing in different

districts of the State, it may be brought in either district, and a duplicate writ may be issued against the defendants, directed to the marshal of any other district in which any defendant resides. The clerk issuing the duplicate writ shall endorse thereon that it is a true copy of a writ sued out of the court of the proper district; and such original and duplicate writs, when executed and returned into the office from which they issue, shall constitute and be proceeded on as one suit; and upon any judgment or decree rendered therein, execution may be issued, directed to the marshal of any district in the same State. (*36 Stat. L., 1101.*)

The words "circuit or" in the second line were eliminated.

As to the construction of this section in connection with the act of March 3, 1875, see Greeley *v.* Lowe, 155 U. S., 71. Where the suit is not based on diverse citizenship, see Third Nat. Bank *v.* Harrison, 8 Fed., 721. Where suit may be brought in either district, see Petri *v.* Creelman Lumber Co., 199 U. S., 487.

Districts containing more than one division; where suit to be brought; transfer of criminal cases.

SEC. 53. When a district contains more than one division, every suit not of a local nature against a single defendant must be brought in the division where he resides; but if there are two or more defendants residing in different divisions of the district it may be brought in either divison. All mesne and final process subject to the provisions of this section may be served and executed in any or all of the divisions of the district, or if the State contains more than one district, then in any of such districts, as provided in the preceding section. All prosecutions for crimes or offenses shall be had within the division of such districts where the same were committed, unless the court, or the judge thereof, upon the application of the defendant, shall order the cause to be transferred for prosecution to another division of the district. When a transfer is ordered by the court or judge, all the papers in the case, or certified copies thereof, shall be transmitted by the clerk, under the seal of the court, to the division to which the cause is so ordered transferred; and thereupon the cause shall be proceeded with in said division in the same manner as if the offense had been committed therein. In all cases of the removal of suits from the courts of a State to the district court of the United States such removal shall be to the United States district court in the division in which the county is situated from which the removal is made; and the time within which the removal shall be perfected, in so far as it refers to or is regulated by the terms of United States courts, shall be deemed to refer to the terms of the United States district court in such division. (*36 Stat. L., 1101.*)

Criminal prosecutions.

Transfer of record.

Removal from State courts.

In a great many acts creating divisions of districts there are to be found provisions requiring that suits not of a local nature shall be brought in the division in which one of the defendants resides, etc., and provisions similar in character, with respect to the removal of cases from State to Federal courts. These provisions differ in some instances in the language used, but are substantially to the same effect. To avoid the necessity for repeating them in the various sections in which they otherwise would appear, and to avoid the necessity for repeating similar provisions in future acts creating or changing divisions or districts, this section has been inserted and made general in its application.

The section also contains the restriction with respect to the place of prosecution of crimes and offenses found in many acts; and the provision of the act of June 2, 1906 (34 Stat., 206), authorizing the transfer of certain criminal cases from one division of the western district of Arkansas to another division, for trial, etc., is also carried into the section and made general in its application. The purpose of this latter provision is to facilitate the early disposition of criminal cases, especially in minor cases, where the defendant is unable to give bail, and may, in view of the fact that in many divisions but one term of court is held each year, possibly be compelled to remain in jail nearly a year before a trial may be had or before an opportunity will present itself for him to plead guilty.

On the question of venue in conspiracy cases, see Hyde *v.* U. S., 225 U. S., 347; Brown *v.* Elliott, 225 U. S., 392.

Suits of a local nature; where to be brought.

R. S., s. 741.

SEC. 54. In suits of a local nature, where the defendant resides in a different district, in the same State, from that in which the suit is brought, the plaintiff may have original and final process against him, directed to the marshal of the district in which he resides. (*36 Stat. L., 1102.*)

This section made no change in existing law. See Greeley *v.* Lowe, 155 U. S., 58.

When property lies in different districts in same State.

R. S., s. 742.

SEC. 55. Any suit of a local nature, at law or in equity, where the land or other subject-matter of a fixed character lies partly in one district and partly in another, within the same State, may be brought in the district court of either district; and the court in which it is brought shall have jurisdiction to hear and decide it, and to cause mesne or final process to be issued and executed, as fully as if the said subject-matter were wholly within the district for which such court is constituted. (*36 Stat. L., 1102.*)

The only material change in the language consists in the substitution of the words "district court" for "circuit court."

See Horn *v.* Pere Marquette R. Co., 151 Fed., 626, on the question where suit may be brought.

Where property lies in different States in same circuit; jurisdiction of receiver.

Approval of circuit court.

Effect of disapproval.

Issue of process.

SEC. 56. Where in any suit in which a receiver shall be appointed the land or other property of a fixed character, the subject of the suit, lies within different States in the same judicial circuit, the receiver so appointed shall, upon giving bond as required by the court, immediately be vested with full jurisdiction and control over all the property, the subject of the suit, lying or being within such circuit; subject, however, to the disapproval of such order, within thirty days thereafter, by the circuit court of appeals for such circuit, or by a circuit judge thereof, after reasonable notice to adverse parties and an opportunity to be heard upon the motion for such disapproval; and subject, also, to the filing and entering in the district court for each district of the circuit in which any portion of the property may lie or be, within ten days thereafter, of a duly certified copy of the bill and of the order of appointment. The disapproval of such appointment within such thirty days, or the failure to file such certified copy of the bill and order of appointment within ten days, as herein required, shall divest such receiver of jurisdiction over all such property except that portion thereof lying or being within the State in which the suit is brought. In any case coming within the provisions of this section, in which a receiver shall be appointed, process may issue and be executed within any district of the circuit in the same manner and to the same extent as if the property were wholly within the same district; but orders affecting such property shall be entered of record in each district in which the property affected may lie or be. (*36 Stat. L., 1102.*)

This section is new legislation.

See Congressional Record, 61st Congress, 3d session, pp. 566, 3998, sec. 56. The purpose of the legislation was thus stated by Mr. Moon of Pennsylvania: "It applies only to the appointment of a receiver to take physical possession of property lying in a territory covering more than one district. In other words, it is to cure the only objection that I have ever heard urged against the elimination of the circuit courts. It applies to a case where a receiver is to be appointed by a district judge covering property that runs across an entire circuit and includes a great number of districts, and it provides that the action of the district judge sitting in one circumscribed district shall be conclusive in the appointment of a receiver only to preserve the status quo, and that shall be subject to confirmation of the circuit court of appeals or a circuit judge within thirty days."

For cases illustrative of the condition referred to, see Farmers' Loan & Trust Co. *v.* Northern Pacific R. Co., 69 Fed., 871; Kittel *v.* Augusta, T. & G. R. Co., 78 Fed., 855.

Absent defendants in suits to enforce liens, remove clouds on titles, etc.

R. S., s. 738. 3 Mar., 1875, 18 Stat. L., 472, c. 137, s. 8; 1 Supp., 84.

SEC. 57. When in any suit commenced in any district court of the United States to enforce any legal or equitable lien upon or claim to, or to remove any incumbrance or lien or cloud upon the title to real or personal property within the district where such suit is brought, one or more of the defendants therein shall not be an inhabitant of or found within the said district, or shall not voluntarily appear thereto, it shall be lawful for the court to make an order directing such absent defendant or defendants to appear, plead, answer, or demur by a day certain to be designated, which order shall be served on such absent defendant or defendants, if practicable, wherever found, and also upon the person or persons in possession or charge of said property, if any there be; or where such personal service upon such absent defendant or defendants is not practicable, such order shall be published in such manner as the court may direct, not less than once a week for six consecutive weeks. In case such absent defendant shall not appear, plead, answer, or demur within the time so limited, or within some further time, to be allowed by the court, in its discretion, and upon proof of the service or publication of said order and of the performance of the directions contained in the same, it shall be lawful for the court to entertain jurisdiction, and proceed to the hearing and adjudication of such suit in the same manner as if such absent defendant had been served with process within the said district; but said adjudication shall, as regards said absent defendant or defendants without appearance, affect only the property which shall have been the subject of the suit and under the jurisdiction of the court therein, within such district; and when a part of the said real or personal property against which such proceedings shall be taken shall be within another district, but within the same State, such suit may be brought in either district in said State: *Provided, however*, That any defendant or defendants not actually personally notified as above provided may, at any time within one year after final judgment in any suit mentioned in this section, enter his appearance in said suit in said district court, and thereupon the said court shall make an order setting aside the judgment therein and permitting said defendant or defendants to plead therein on payment by him or them of such costs as the court shall deem just; and thereupon said suit shall be proceeded with to final judgment according to law. (*36 Stat. L., 1102.*)

Failure to appear; proceedings.

Proviso. Time for appearance if not personally notified.

Section 8 of the act of March 3, 1875 (1 Supp.), amended, if it did not entirely supersede, section 738, Revised Statutes, (Shainwald *v.* Lewis, 5 Fed., 517; Ry. Co. *v.* Ry. Co., 49 Fed., 614, 615; Greeley *v.* Lowe, 155 U. S., 72); and is re-enacted by this section, substituting the words "district court" for the words "circuit court."

This section does not confer jurisdiction of a suit to abate a nuisance in another State from that of the plaintiff. "It would be a most violent construction of the eighth section of the act of 1875 to hold that the right to have abated the nuisance in question arising from the use of defendant's property in Tennessee, because of the injurious effects upon plaintiff's real property in Georgia, creates, in the meaning of the statute, a 'claim to' real property within the district where the suit is brought." Ladew *v.* Tennessee Copper Co., 218 U. S., 357, 368. An action to remove incumbrances from the property of a corporation in which the suit is brought, is cognizable under this section, though some of the stockholders are nonresidents of the district in which they are sued. Jellenik *v.* Huron Copper Mining Co., 177 U. S., 1; Schultz *v.* Diehl, 217 U. S., 594. That the provisions for substituted process are strictly construed against the right, see Batt *v.* Procter, 45 Fed., 515. On the joinder of parties and residence in the district, see Greeley *v.* Lowe, 155 U. S., 58; Dick *v.* Foraker, 155 U. S., 404; Miller *v.* Ahrens, 150 Fed., 644. On the rights of defendants under the proviso, see Perez *v.* Fernandez, 220 U. S., 224.

Civil causes may be transferred to another division of district by agreement.

28 Feb., 1887, 24 Stat. L., 425, c. 271, s. 4; 1 Supp., 544. 2 June, 1906, 34 Stat. L., 206, c. 2569, s. 1.

SEC. 58. Any civil cause, at law or in equity, may, on written stipulation of the parties or of their attorneys of record signed and filed with the papers in the case, in vacation or in term, and on the written order of the judge signed and filed in the case in vacation or on the order of the court duly entered of record in term, be transferred to the court of any other division of the same district, without regard to the residence of the defendants, for trial. When a cause

shall be ordered to be transferred to a court in any other division, it shall be the duty of the clerk of the court from which the transfer is made to carefully transmit to the clerk of the court to which the transfer is made the entire file of papers in the cause and all documents and deposits in his court pertaining thereto, together with a certified transcript of the records of all orders, interlocutory decrees, or other entries in the cause; and he shall certify, under the seal of the court, that the papers sent are all which are on file in said court belonging to the cause; for the performance of which duties said clerk so transmitting and certifying shall receive the same fees as are now allowed by law for similar services, to be taxed in the bill of costs, and regularly collected with the other costs in the cause; and such transcript, when so certified and received, shall [t]henceforth constitute a part of the record of the cause in the court to which the transfer shall be made. The clerk receiving such transcript and original papers shall file the same and the case shall then proceed to final disposition as other cases of a like nature. (*36 Stat. L., 1103.*)

This section is based on the provisions in the act of February 28, 1887, dividing Missouri into two districts, and in the act of June 2, 1906, to regulate the practice in civil and criminal cases in the western district of Arkansas.

In recent years, in a number of instances, Congress has passed acts dividing districts into from two to five divisions, and providing for holding but one term of court a year in each division, and also providing that suits shall be brought in the division in which they arise. The result is, with but one term of court a year, there is great delay in litigation. Since the purpose of such provision is solely to facilitate the disposition of cases, the section has been so drawn as to be general in its application.

On the construction of the law from which this section was drawn in connection with other general legislation, see Petri *v.* Creelman Lumber Co., 199 U. S., 496.

Upon creation of new district or division, etc., where prosecution to be instituted or action brought.

SEC. 59. Whenever any new district or division has been or shall be established, or any county or territory has been or shall be transferred from one district or division to another district or division, prosecutions for crimes and offenses committed within such district, division, county, or territory prior to such transfer, shall be commenced and proceeded with the same as if such new district or division had not been created, or such county or territory had not been transferred, unless the court, upon the application of the defendant, shall order the cause to be removed to the new district or division for trial. Civil actions pending at the time of the creation of any such district or division, or the transfer of any such county or territory, and arising within the district or division so created or the county or territory so transferred, shall be tried in the district or division as it existed at the time of the institution of the action, or in the district or division so created, or to which the county or territory is or shall be so transferred, as may be agreed upon by the parties, or as the court shall direct. The transfer of such prosecutions and actions shall be made in the manner provided in the section last preceding. (*36 Stat. L., 1103.*)

This section is based upon provisions contained in a large number of acts creating new districts or divisions, or transferring counties from one district or division to another. The purpose of the section is to obviate the necessity for repeating, in similar acts in the future, provisions of this character.

Creation of new district or transfer of territory not to divest lien; how lien to be enforced.

5 Aug., 1886, 24 Stat. L., 308, c. 928; 1 Supp., 513. 2 Mar., 1901, 31 Stat. L., 880, c. 801; 2 Supp., 501.

Enforcement.

SEC. 60. The creation of a new district or division or the transfer of any county or territory from one district or division to another district or division, shall not affect or divest any lien theretofore acquired in the circuit or district court by virtue of a decree, judgment, execution, attachment, seizure, or otherwise, upon property situated or being within the district or division so created, or the county or territory so transferred. To enforce any such lien, the clerk of the court in which the same is acquired, upon the request and

at the cost of the party desiring the same, shall make a true and certified copy of the record thereof, which, when so made and certified, and filed in the proper court of the district or division in which such property is situated or shall be, after such transfer, shall constitute the record of such lien in such court, and shall be evidence in all courts and places equally with the original thereof; and thereafter like proceedings shall be had thereon, and with the same effect, as though the cause or proceeding had been originally instituted in such court. The provisions of this section shall apply not only in all cases where a district or division is created, or a county or any territory is transferred by this or any future act, but also in all cases where a district or division has been created, or a county or any territory has been transferred by any law heretofore enacted. (*36 Stat. L., 1103.*)

This section embraces the provisions found in the act of August 5, 1886, dividing California into two districts, and the act of March 2, 1901, creating the middle district of Pennsylvania, and is intended to preserve liens acquired prior to the creation of a new district or the transfer of any territory; and to provide a method of enforcing such lien where the property to which it was attached is within territory transferred to another district. It is also intended to avoid the necessity of carrying provisions of the character herein referred to in future acts.

Commissioners to administer oaths to appraisers.

R. S., s. 570.

SEC. 61. Any district judge may appoint commissioners, before whom appraisers of vessels or goods and merchandise seized for breaches of any law of the United States, may be sworn; and such oaths, so taken, shall be as effectual as if taken before the judge in open court. (*36 Stat. L., 1104.*)

This section is a re-enactment of the existing law

Transfer of records to district court when a Territory becomes a State.

R. S., s. 567.

SEC. 62. When any Territory is admitted as a State, and a district court is established therein, all the records of the proceedings in the several cases pending in the highest court of said Territory at the time of such admission, and all records of the proceedings in the several cases in which judgments or decrees had been rendered in said Territorial court before that time, and from which writs of error could have been sued out or appeals could have been taken, or from which writs of error had been sued out or appeals had been taken and prosecuted to the Supreme Court or to the circuit court of appeals, shall be transferred to and deposited in the district court for the said State. (*36 Stat. L., 1104.*)

The changes in this section consist in the use of the words "highest" court, instead of the words "court of appeals," for the reason that the appellate court of some of the Territories is the "supreme court," and the term "highest" more accurately expresses the court from which the cases will be transferred. The words "or the circuit court" are inserted after the words "the Supreme Court," as Circuit Courts of Appeals now have jurisdiction over certain cases coming from the highest court of the Territories. (See section 133.)

"On the admission of a Territorial Government into the Union as a State, the concurrence of both the Federal and State governments would seem to be required in the transfer of the records, in cases of appropriate State jurisdiction, from the old to the new government. An act of Congress would be incapable of passing them under the State jurisdiction, as would be an act of the Legislature of the State to take the records out of the custody of the Federal government. Both should concur." Benner *v.* Porter, 9 How., 235. But see Freeborn *v.* Smith, 2 Wall., 173. See also Baker *v.* Morton, 12 Wall., 150.

District judge shall demand and compel delivery of records of Territorial court.

R. S., s. 568.

SEC. 63. It shall be the duty of the district judge, in the case provided in the preceding section, to demand of the clerk, or other person having possession or custody of the records therein mentioned, the delivery thereof, to be deposited in said district court; and in case of the refusal of such clerk or person to comply with such demand, the said district judge shall compel the delivery of such

records by attachment or otherwise, according to law. (*36 Stat. L., 1104.*)

This section is a re-enactment of the existing law.

See note to section 62.

Jurisdiction of district courts in cases transferred from Territorial courts.

R. S., s. 569.

SEC. 64. When any Territory is admitted as a State, and a district court is established therein, the said district court shall take cognizance of all cases which were pending and undetermined in the trial courts of such Territory, from the judgments or decrees to be rendered in which writs of error could have been sued out or appeals taken to the Supreme Court or to the circuit court of appeals, and shall proceed to hear and determine the same. (*36 Stat. L., 1104.*)

This section is a re-enactment of the existing law, except for changes similar to those made in section 62, and being made herein for the same reason.

(See Freeborn *v.* Smith, 2 Wall., 173.)

Ames *v.* Railroad, 4 Dill., 251. 1 Fed. Cas., 750; Gaffney *v.* Gillette, 4 Dill., 264, 9 Fed. Cas., 1026; Dutton *v.* Muth, 45 Fed. Rep., 390.

Receivers to manage property according to State laws.

18 Aug., 1888, 25 Stat. L., 436, c. 866, s. 2; 1 Supp., 613.

SEC. 65. Whenever in any cause pending in any court of the United States there shall be a receiver or manager in possession of any property, such receiver or manager shall manage and operate such property according to the requirements of the valid laws of the State in which such property shall be situated, in the same manner that the owner or possessor thereof would be bound to do if in possession thereof. Any receiver or manager who shall willfully violate any provision of this section shall be fined not more than three thousand dollars, or imprisoned not more than one year, or both. (*36 Stat. L., 1104.*)

This section is substantially a re-enactment of the existing law. The only change made has been the omission of the redundant matter in the penal clause; and the omission of the useless word "that" at the beginning of the section. These changes do not change the law.

"It is the duty of a receiver, appointed by a Federal court, to take charge of a railroad, to operate such road according to the laws of the State in which it is situated." Erb *v.* Morasch, 177 U. S., 585. Judgment against the receiver can only be realized out of the property in his hands. Texas & Pacific Ry. *v.* Johnson, 151 U. S., 96. This section does not restrict the power of the Federal court to preserve property in the custody of the receiver from external attack. In re Tyler, 149 U. S., 182.

Suits against receiver.

18 Aug., 1888, 25 Stat. L., 436, c. 866, s. 3; 1 Supp., 614.

SEC. 66. Every receiver or manager of any property appointed by any court of the United States may be sued in respect of any act or transaction of his in carrying on the business connected with such property, without the previous leave of the court in which such receiver or manager was appointed; but such suit shall be subject to the general equity jurisdiction of the court in which such manager or receiver was appointed so far as the same may be necessary to the ends of justice. (*36 Stat. L., 1104.*)

This section made no change in the existing law.

"This act abrogated the rule that a receiver could not be sued without leave of the court appointing him, and gave the citizen the unconditional right to bring his action in the local courts, and to have the justice and amount of his demand determined by the verdict of a jury. He ceased to be compelled to litigate at a distance, or in any other forum, or according to any other course of justice, than he would be entitled to if the property or business were not being administered by the Federal court." Gableman *v.* Peoria, etc., Ry. Co., 179 U. S., 338. But it has been said that "the statute in question cannot be construed to mean that suits may be brought against a receiver to establish any right to the property which may be placed in his custody without the permission of the court. The property being at all times under the control of the court of administration, it would be absurd to permit the institution of suits in another forum to recover such property or diminish its value." Buckhannon, etc., R. Co. *v.* Davis, 135 Fed., 707. The receiver may be sued in a State court. Erb *v.* Morasch, 177 U. S., 584. That the suit "shall be subject to the general equity jurisdiction," see Dillingham *v.* Hawk, 60 Fed., 494. 497; Willcox *v.* Jones, 177 Fed., 870.

Certain persons not to be appointed or employed as officers of courts.

13 Aug., 1888, 25 Stat. L., 437, c. 866, s. 7; 1 Supp., 614. 21 Dec., 1911, 37 Stat. L., 46, c. 4.

SEC. 67. No person shall be appointed to or employed in any office or duty in any court who is related by affinity or consanguinity within the degree of first cousin to the judge of such court: *Provided*, That no such person at present holding a position or employment in a circuit court shall be debarred from similar appointment or employment in the district court succeeding to such circuit court jurisdiction. (*36 Stat. L., 1105.*)

As originally enacted, the only change in this section was the omission of the word "that" at the beginning of the section. The section is now given as amended by the act of December 21, 1911.

An attack on an appointment made under this provision must be made by a motion to set aside the order appointing. Seaman *v.* Northwestern Mut. L. Ins. Co., 86 Fed., 493.

Certain persons not to be masters or receivers.

3 Mar., 1879, 20 Stat. L., 415, c. 183; 1 Supp., 254.

SEC. 68. No clerk of a district court of the United States or his deputy shall be appointed a receiver or master in any case, except where the judge of said court shall determine that special reasons exist therefor, to be assigned in the order of appointment. (*36 Stat. L., 1105.*)

The only change made in this section was the omission of the reference to the circuit courts.

As to what constitutes a "special reason," see Fischer *v.* Hayes, 22 Fed., 92; Briggs *v.* Neal, 120 Fed., 224. As to the purpose of this section, see Quinton *v.* Neville, 154 Fed., 432. That a person appointed is a *de facto* officer whose acts are valid as to third persons, see Northwestern Mutual L. Ins. Co. *v.* Seaman, 80 Fed., 357.

CHAPTER FIVE.

DISTRICT COURTS—DISTRICTS, AND PROVISIONS APPLICABLE TO PARTICULAR STATES.

NOTES ON CHAPTER FIVE GENERALLY.

In a number of acts creating judicial districts or divisions are to be found provisions already fully covered by general laws applicable to all districts. These provisions have been omitted as redundant.

So, also, are to be found provisions declaring the division in which suits not of a local nature shall be brought; where process may be served; where prosecutions for crimes shall be instituted, and how they may be transferred to other divisions for prosecution; the division to which suits removed from state

courts shall be removed, and fixing the time within which such removal may be had. All such provisions have been omitted from the several sections revised in this chapter and have been embraced in section 53 of this code, which is made general in its application (p. 36).

So, also, in several acts are to be found provisions providing for the removal of civil cases from one division to another and prescribing the time and manner of removal. These provisions have likewise been omitted and section 58 substituted in place thereof (p. 38).

So, also, in a number of acts are to be found provisions providing for the disposition of pending civil and criminal cases. These are also omitted and section 59 substituted in place thereof.

In two acts, one relating to California and one to Pennsylvania, are to be found provisions preserving liens upon property acquired prior to the passage of those acts. They have been omitted from the sections relating to those States, and section 60 substituted in lieu thereof (p. 39).

So, also, in a number of acts are to be found provisions requiring juries to be drawn from the division in which the suits to be tried are pending. The result is, in a number of cases, this limitation applies to one division in a district and not to any other division thereof. All such provisions have been omitted, leaving the general law, revised in chapter 12, Juries, to control in the manner of the drawing of juries (p. 141).

The general law (section 3) provides for one clerk of the court in each judicial district. In 8 of the 78 judicial districts embraced within the States special provision is made for more than one clerk, viz, Arkansas, eastern district, 3 clerks; Kentucky, eastern district, 6 clerks; Kentucky, western district, 4 clerks; Missouri, western district, 4 clerks; North Carolina, eastern district, 5 clerks; North Carolina, western district, 4 clerks; Virginia, western district, 4 clerks; Wisconsin, western district, 3 clerks. Each of these clerks is an independent clerk, entitled to the maximum compensation allowed the single clerk of each of the 70 judicial districts. So, in the eastern district of Kentucky, for example, each of the 6 clerks is entitled to retain out of the fees received, if enough for that purpose, a compensation of $3,500, or six times the amount that could be retained by one clerk. As a matter of fact, in the eastern district of Kentucky the same man was clerk of the circuit and the district court at five places, thus entitling him to a maximum compensation of $35,000 per annum, should the fees be sufficient. No good reason exists why there should be but one clerk in each of the 70 districts and from 3 to 6 clerks in the remaining 8 districts. For this reason the provisions authorizing the appointment of more than one clerk in a district are omitted, thus providing for but one clerk in each district. In lieu of clerks, deputy clerks are provided for at each place of holding court in the 8 districts at which clerks are now provided for.

The general law (revised in section 4 of this code) leaves to the discretion of the judge the number of deputy clerks to be appointed. In a number of acts Congress has provided that deputy clerks and deputy marshals shall be appointed for certain places. Provisions of this character have been retained in the sections.

In other acts are to be found provisions for deputy clerks at certain places, if the judge deems it necessary. This is merely a restatement of the general authority existing under section 4; and all such provisions are omitted as redundant.

In other acts are to be found provisions enlarging the general power because of some peculiar condition in the district not existing in other districts. For this reason, a number of provisions of that character have been retained in the sections.

In the Revised Statutes one chapter is devoted to defining the judicial districts; another chapter to fixing the times and places of holding court; and still another chapter to special provisions respecting clerks, residence of judges, and appointment, residence, and compensation of deputy clerks in certain districts, etc.

Further, in the Revised Statutes, in those districts in which the counties were named, the sections provided that they should be composed of the counties as they existed on a certain date. For instance, in Illinois (sec. 536), the date is 1855; in Iowa (sec. 537), 1859; in Michigan (sec. 538), 1863; in Mississippi (sec. 539), 1838; in Missouri (sec. 540), 1857; in Ohio (sec. 544), 1855; in Pennsylvania (sec. 547), 1838 and 1856; and in Texas (sec. 548), 1852.

From this it is apparent that the only proper way to describe the districts and divisions where there are more than one district or division in a State is to describe them as they existed on a certain date—the latest date that can be had; hence, July 1, 1909, has been chosen. In order to secure absolute accuracy drafts of the sections relating to the various judicial districts were sent to the district attorneys in the districts for correction, and as this method has been pursued for three successive years, the list is believed to be correct.

Further, in view of the number of districts and divisions existing in a number of the States, and of the large number of places of holding courts, all the

provisions respecting the organization of the district, the fixing of the times and places of holding court, and the special provisions applicable thereto, in so far as they apply to each State, are brought together in one section. This is believed to be in the interest of simplicity and ready reference.

In the notes in detail on the sections of this chapter no further reference will be made respecting provisions of the character above referred to, the notes being limited to other provisions and changes, and to be considered in connection with these general statements.

Judicial districts.

R. S., s. 530.

SEC. 69. The United States are divided into judicial districts as follows:

The language of section 69 has been changed by the use of the word "are" for the words "shall be."

BOUNDARY OF DISTRICT.

Where Congress declares that a judicial district shall consist of a State, and afterwards the boundary of the State is lawfully altered to include or exclude a particular piece of territory, it is a reasonable construction to say that the judicial district shall, *ipso facto*, without further legislation by Congress, expand or contract accordingly. Devoe Manufacturing Co., Petitioner, 108 U. S., 401, 414. See also Barrett *v.* U. S., 169 U. S., 221. That the organization of new counties and changing county lines by state legislation does not affect the district boundary fixed by Act of Congress, see Hyde *v.* Victoria Land Co., 125 Fed., 971. "There appears to be no limit to the discretion of Congress in respect to the territorial limits within which they may appoint the jurisdiction of the inferior courts erected by them." The Schooner L. W. Eaton, 9 Ben., 289, 15 Fed. Cas., No. 8612. "The creation of divisions and the multiplication of places of trial are for the convenience of litigants, bringing the trial nearer to them and their witnesses." Rosencrans *v.* U. S., 165 U. S., 262. Where the district is bounded by the ocean, see The Hungaria, 41 Fed., 109.

Alabama.

R. S., s. 532.
2 May, 1884, 23 Stat. L., 18, c. 38; 1 Supp., 427.
9 Feb., 1903, 32 Stat. L., 820, c. 533.
16 Feb., 1903, 32 Stat. L., 832, c. 554.
3 Mar., 1905, 33 Stat. L., 987, c. 1419.
14 Apr., 1906, 34 Stat. L., 114, c. 1625, s. 1.
25 Feb., 1907, 34 Stat. L., 931, c. 1198.
7 Mar., 1908, 35 Stat. L., 38, c. 60.
19 Feb., 1909, 35 Stat. L., 640, c. 162.
3 Mar., 1909, 35 Stat. L., 842, c. 269, secs. 17–20.
28 Feb., 1913, 37 Stat. L., —, c. —.

"SEC. 70. The State of Alabama is divided into three judicial districts, to be known as the northern, middle, and southern districts of Alabama. The *northern district* shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Cullman, Jackson, Lawrence, Limestone, Madison, and Morgan, which shall constitute the northeastern division of said district; also the territory embraced on the date last mentioned in the counties of Colbert, Franklin, and Lauderdale, which shall constitute the northwestern division of said district; also the territory embraced on the date last mentioned in the counties of Cherokee, Dekalb, Etowah, Marshall, and Saint Clair, which shall constitute the middle division of said district; also the territory embraced on the date last mentioned in the counties of Blount, Jefferson, and Shelby, which shall constitute the southern division of said district; also the territory embraced on the date last mentioned in the counties of Walker, Winston, Marion, Fayette, and Lamar, which shall constitute the Jasper division of said district; also the territory embraced on the date last mentioned in the counties of Calhoun, Clay, Cleburne, and Talladega, which shall constitute the eastern division of said district; also the territory embraced on the date last mentioned in the counties of Bibb, Greene, Pickens, Sumter, and Tuscaloosa, which shall constitute the western division of said district.

Terms.

Terms of the district court for the northeastern division shall be held at Huntsville on the first Tuesday in April and the second Tuesday in October; for the northwestern division, at Florence on the second Tuesday in February, and the third Tuesday in October:

Rooms at Florence.

Provided, That suitable rooms and accommodations for holding court at Florence shall be furnished free of expense to the Government; for the middle division, at Gadsden on the first Tuesdays in February and August:

Rooms at Gadsden.

Provided, That suitable rooms and accommodations for holding court at Gadsden shall be furnished free of expense to the Government; for the southern division, at Birmingham on the first Mondays in March and September, which courts shall

remain in session for the transaction of business at least six months in each calendar year; for the Jasper division, at Jasper on the second Tuesdays in January and June: *Provided*, That suitable rooms and accommodations for holding court at Jasper shall be furnished free of expense to the Government; for the eastern division, at Anniston on the first Mondays in May and November; and for the western division, at Tuscaloosa on the first Tuesdays in January and June. The clerk of the court for the northern district shall maintain an office, in charge of himself or a deputy, at Anniston, at Florence, at Jasper, and at Gadsden, which shall be kept open at all times for the transaction of the business of said court. The district judge for the northern district shall reside at Birmingham. The *middle district* shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Autauga, Barbour, Bullock, Butler, Chilton, Coosa, Covington, Crenshaw, Elmore, Lowndes, Montgomery, and Pike, which shall constitute the northern division of said district; also the territory embraced on the date last mentioned in the counties of Coffee, Dale, Geneva, Henry, and Houston, which shall constitute the southern division of said district; also the territory embraced on the date last mentioned in the counties of Chambers, Lee, Macon, Randolph, Russell, and Tallapoosa, which shall constitute the eastern division of said middle judicial district. Terms of the district court for the northern division shall be held at Montgomery on the first Tuesdays in May and December; for the southern division, at Dothan on the first Mondays in June and December; and for the eastern division, at Opelika on the first Mondays in April and November: *Provided*, That suitable rooms and accommodations for holding court at Opelika shall be furnished free of expense to the Government. The clerk of the court for the middle district shall maintain an office in charge of himself or a deputy at Dothan, and shall maintain an office in charge of himself or a deputy at Opelika, which said offices at Dothan and Opelika shall be kept open at all times for the transaction of the business of said divisions. The *southern district* shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Baldwin, Choctaw, Clarke, Conecuh, Escambia, Mobile, Monroe, and Washington, which shall constitute the southern division of said district; also the territory embraced on the date last mentioned in the counties of Dallas, Hale, Marengo, Perry, and Wilcox, which shall constitute the northern division of said district. Terms of the district court for the southern division shall be held at Mobile on the fourth Mondays in May and November; and for the northern division, at Selma on the first Mondays in May and November." (*36 Stat. L., 1105.*)

Rooms at Jasper.

Offices.

Middle district divisions.

Terms.

Rooms at Opelika.

Offices.

Southern district divisions.

Terms.

An act of Congress approved March 3, 1905 (33 Stat., 988), appointed a term of court to be held at Selma on the first Monday in May, the time previously fixed for a term at Mobile. Upon the suggestion of the judge of the district, the time for holding the Mobile term has been changed to the fourth Monday in May. The act also provided that a place for holding court at Selma should be furnished free of cost to the Government. That provision is omitted, as a federal building in which to hold the court has been erected at Selma. The provision in the act of February 16, 1903 (32 Stat., 832), requiring Calhoun County to furnish free of cost a building in which to hold court at Tuscaloosa is omitted as obsolete, as the court is now held in a federal building which has been constructed in that city.

The text was amended as here given by the act of February 28, 1913, which created the eastern division of the middle district, and provided for terms of court at Opelika.

SEC. 71. The State of Arkansas is divided into two districts, to be known as the eastern and western districts of Arkansas. The *western district* shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Sevier, Howard, Little

Arkansas.

R. S., ss. 533, 556. 31 Jan., 1877, 19 Stat. L., 230, c. 41; 1 Supp., 129.

1 Apr., 1892, 27 Stat. L., 13, c. 31; 2 Supp., 7. 20 Feb., 1897, 29 Stat. L., 590, c. 269; 2 Supp., 558. 7 July, 1898, 30 Stat. L., 682, c. 571; 2 Supp., 884. 2 Mar., 1899, 30 Stat. L., 976, c. 350; 2 Supp., 959. 16 Jan., 1901, 31 Stat. L., 733, c. 92; 2 Supp., 1458. 18 Mar., 1902, 32 Stat. L., 72, c. 222. 3 Feb., 1903, 32 Stat. L., 795, c. 400. 2 June, 1906, 34 Stat. L., 206, c. 2569, s. 2. 23 June, 1910, 36 Stat. L., 603, c. 372.

River, Pike, Hempstead, Miller, Lafayette, Columbia, Nevada, Ouachita, Union, and Calhoun, which shall constitute the Texarkana division of said district; also the territory embraced on the date last mentioned in the counties of Polk, Scott, Yell, Logan, Sebastian, Franklin, Crawford, Washington, Benton, and Johnson, which shall constitute the Fort Smith division of said district; also the territory embraced on the date last mentioned in the counties of Baxter, Boone, Carroll, Madison, Marion, Newton, and Searcy, which shall constitute the Harrison division of said district. Terms of the district court for the Texarkana division shall be held at Texarkana on the second Mondays in May and November; for the Fort Smith division, at Fort Smith on the second Mondays in January and June; and for the Harrison division, at Harrison on the second Mondays in April and October. The *eastern district* shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Lee, Phillips, Saint Francis, Cross, Monroe, and Woodruff, which shall constitute the eastern division of said district; also the territory embraced on the date last mentioned in the counties of Independence, Cleburne, Stone, Izard, Sharp, and Jackson, which shall constitute the northern division of said district; also the territory embraced on the date last mentioned in the counties of Crittenden, Clay, Craighead, Greene, Mississippi, Poinsett, Fulton, Randolph, and Lawrence, which shall constitute the Jonesboro division of said district; and also the territory embraced on the date last mentioned in the counties of Arkansas, Ashley, Bradley, Chicot, Clark, Cleveland, Conway, Dallas, Desha, Drew, Faulkner, Garland, Grant, Hot Spring, Jefferson, Lincoln, Lonoke, Montgomery, Perry, Pope, Prairie, Pulaski, Saline, Van Buren, and White, which shall constitute the western division of said district. Terms of the district court for the eastern division shall be held at Helena on the second Monday in March and the first Monday in October; for the northern division, at Batesville on the fourth Monday in May and the second Monday in December; for the Jonesboro division, at Jonesboro on the second Mondays in May and November; and for the western division, at Little Rock on the first Monday in April and the third Monday in October. The clerk of the court for the eastern district shall maintain an office in charge of himself or a deputy at Little Rock, at Helena, at Jonesboro, and at Batesville, which shall be kept open at all times for the transaction of the business of the court. And the clerk of the court for the western district shall maintain an office in charge of himself or a deputy at Fort Smith, at Harrison, and at Texarkana, which shall be kept open at all times for the transaction of the business of the court. (*36 Stat. L., 1106.*)

Eastern district Divisions.

Terms.

Offices.

Following the policy stated in the notes on the chapter, the number of clerks in the eastern district has been reduced from three to one, and in lieu thereof deputy clerks provided for.

The substance of the act of June 2, 1906 (34 Stat., 206), providing for the transfer of civil and criminal cases in the western district of Arkansas, is to be found in sections 53 and 58 of this code; otherwise the section states concisely what was the existing law.

California.

R. S., ss. 531, 572, 586. 5 Aug., 1886, 24 Stat. L., 308, c. 928; 1 Supp., 513. 26 May, 1896, 29 Stat. L., 135, c. 238; 2 Supp., 474. 29 May, 1900, 31 Stat. L., 219, c. 594; 2 Supp., 179. 29 June, 1906, 34 Stat. L., 631, c. 3626, s. 1. 2 Mar., 1907, 34 Stat. L., 1253, c. 2575, s. 2.

SEC. 72. The State of California is divided into two districts, to be known as the northern and southern districts of California. The *southern district* shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Fresno, Inyo, Kern, Kings, Madera, Mariposa, Merced, and Tulare, which shall constitute the northern division of said district; also the territory embraced on the date last mentioned in the counties of Imperial, Los Angeles, Orange, Riverside, San Bernardino, San Diego, San Luis Obispo, Santa Barbara, and Ventura, which shall constitute the southern division of said district. Terms of the district court for the northern division shall be held at Fresno on the first Monday

in May and the second Monday in November; and for the southern division, at Los Angeles on the second Monday in January and the second Monday in July, and at San Diego on the second Mondays in March and September. The *northern district* shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Glenn, Humboldt, Lake, Lasen, Marin, Mendocino, Modoc, Mono, Monterey, Napa, Nevada, Placer, Plumas, Sacramento, San Benito, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Tehama, Trinity, Tuolumne, Yolo, and Yuba. Terms of the district court for the northern district shall be held at San Francisco on the first Monday in March, the second Monday in July, and the first Monday in November; at Sacramento on the second Monday in April; and at Eureka on the third Monday in July. (*36 Stat. L., 1107.*)

22 June, 1910, 36 Stat. L., 589, c. 328.
Terms.
Northern district.
Divisions.
Terms.

A Federal building in which to hold court has been erected at Fresno; hence the provision in the act of May 29, 1900 (2 Supp., 1181), requiring free accommodations to be furnished for the court at that place is omitted as obsolete. The provision in the act of August 5, 1886 (24 Stat., 308), respecting liens, is carried into section 60 of this code and made general in its application. With these exceptions the section states what was the existing law.

See Geiger *v.* Tacoma R. etc. Co., 141 Fed., 169.

SEC. 73. The State of Colorado shall constitute one judicial district, to be known as the district of Colorado. Terms of the district court shall be held at Denver on the first Tuesdays in May and November; at Pueblo on the first Tuesday in April; and at Montrose on the second Tuesday in September. (*36 Stat. L., 1108.*)

Colorado.

20 June, 1876, 19 Stat. L., 61, c. 147; 1 Supp., 106. 20 Apr., 1880, 21 Stat. L., 76, c. 58; 1 Supp., 281. 3 Aug., 1886, 24 Stat. L., 214, c. 848; 1 Supp., 510. 16 Feb., 1903, 32 Stat. L., 833, c. 555.

This section states concisely what was the existing law.

SEC. 74. The State of Connecticut shall constitute one judicial district, to be known as the district of Connecticut. Terms of the district court shall be held at New Haven on the fourth Tuesdays in February and September, and at Hartford on the fourth Tuesday in May and the first Tuesday in December. (*36 Stat. L., 1108.*)

Connecticut.

R. S., ss. 531, 572. 30 June, 1879, 21 Stat. L., 41, c. 49; 1 Supp., 270.

Except for the time of holding court at New Haven, this section states the existing law.

SEC. 75. The State of Delaware shall constitute one judicial district, to be known as the district of Delaware. Terms of the district court shall be held at Wilmington on the second Tuesdays in March, June, September, and December. (*36 Stat. L., 1108.*)

Delaware.

R. S., ss. 531, 572. 11 June, 1910, 36 Stat. L., 466, c. 286.

This section states concisely what was the existing law.

SEC. 76. The State of Florida is divided into two districts, to be known as the northern and southern districts of Florida. The *southern district* shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Baker, Bradford, Brevard, Citrus, Clay, Columbia, Dade, De Soto, Duval, Hamilton, Hernando, Hillsboro, Lake, Lee, Madison, Manatee, Marion, Monroe, Nassau, Orange, Osceola, Palm Beach, Paseo, Polk, Putnam, Saint John, Sumter, Suwanee, Saint Lucie, and Volusia. Terms of the district court for the southern district shall be held at Ocala on the third Monday in January; at Tampa on the second Monday in February; at Key West on the first Mondays in May and November; at Jacksonville on the first Monday in December; at Fernandina on the first Monday in April; and at Miami on the fourth Monday in April. The district court for the southern district shall be open at all times for the purpose of hearing and deciding causes of

Florida.

R. S., ss. 534, 572, 575, 598. 3 Feb., 1879, 20 Stat. L., 280, c. 43; 1 Supp., 214. 30 June, 1886, 24 Stat. L., 106, c. 581; 1 Supp., 500. 23 July, 1894, 28 Stat. L., 117, c. 149; 2 Supp., 203. 18 May, 1900, 31 Stat. L., 180, c. 482; 2 Supp., 1171. 18 Feb., 1905, 33 Stat. L., 719, c. 584. 9 June, 1906, 34 Stat. L., 226, c. 3062, s. 2. 6 Feb., 1908, 35 Stat. L., 6, c. 18.

Northern district.

admiralty and maritime jurisdiction. The *northern district* shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Alachua, Calhoun, Escambia, Franklin, Gadsden, Holmes, Jackson, Jefferson, Lafayette, Leon, Levy, Liberty, Santa Rosa, Taylor, Wakulla, Walton, and Washington.

Terms.

Terms of the district court for the northern district shall be held at Tallahassee on the second Monday in January; at Pensacola on the first Mondays in May and November; at Marianna on the first Monday in April; and at Gainesville on the second Mondays in June and December. (*36 Stat. L., 1108.*)

This section is a substantial reenactment of the existing law.

Georgia.

R. S., ss. 535, 572.
29 Jan., 1880, 21 Stat. L., 62, c. 17; 1 Supp., 276.
20 June, 1884, 23 Stat. L., 50, c. 106; 1 Supp., 439.
15 Feb., 1889, 25 Stat. L., 671, c. 168; 1 Supp., 643.
23 Feb., 1889, 25 Stat. L., 690, c. 205; 1 Supp., 650.
3 Mar., 1891, 26 Stat. L., 1110, c. 566; 1 Supp., 954.
27 Aug., 1894, 28 Stat. L., 504, c. 341; 2 Supp., 265.
12 Apr., 1900, 31 Stat. L., 73, c. 185; 2 Supp., 1126.
28 Feb., 1901, 31 Stat. L., 818, c. 621; 2 Supp., 1492.
26 Feb., 1902, 32 Stat. L., 42, c. 33.
30 June, 1902, 32 Stat. L., 550, c. 1338.
7 Apr., 1904, 33 Stat. L., 161, c. 940.
7 Apr., 1904, 33 Stat. L., 161, c. 941.
3 Mar., 1905, 33 Stat. L., 999, c. 1431.
28 June, 1906, 34 Stat. L., 547, c. 3577.
5 Aug., 1909, 36 Stat. L., 181, c. 11.
4 Mar., 1913, 37 Stat. L., c. —.

SEC. 77. The State of Georgia is divided into two districts, to be known as the northern and southern districts of Georgia. The *northern district* shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Campbell, Carroll, Clayton, Cobb, Coweta, Cherokee, DeKalb, Douglass, Dawson, Fannin, Fayette, Fulton, Forsyth, Gilmer, Gwinnett, Hall, Henry, Lumpkin, Milton, Newton, Pickens, Rockdale, Spalding, Towns, and Union, which shall constitute the northern division of said district; also the territory embraced on the date last mentioned in the counties of Banks, Clarke, Elbert, Franklin, Greene, Habersham, Hart, Jackson, Morgan, Madison, Oglethorpe, Oconee, Rabun, Stephens, Walton, and White, which shall constitute the eastern division of said district; also the territory embraced on the date last mentioned in the counties of Chattahoochee, Clay, Early, Harris, Heard, Meriwether, Marion, Muscogee, Quitman, Randolph, Schley, Stewart, Talbot, Taylor, Terrell, Troup, and Webster, which shall constitute the western division of said district; also the territory embraced on the date last mentioned in the counties of Bartow, Chattooga, Catoosa, Dade, Floyd, Gordon, Haralson, Murray, Paulding, Polk, Walker, and Whitfield, which shall constitute the northwestern division of said district. Terms of the district court for northern division of said district shall be held at Atlanta on the second Monday in March and the first Monday in October [and at Gainsville on the fourth Mondays in April and November, and it shall be the duty of the judge of said court to assign for trial at Gainsville such cases, both civil and criminal, as may in his judgment be most convenient to the parties to said cases and as may be in the interest of economical expenditures by the Government]; for the eastern division, at Athens on the second Monday in April and the first Monday in November; for the western division, at Columbus on the first Mondays in May and December; and for the northwestern division, at Rome on the third Mondays in May and November. The clerk of the court for the northern district shall maintain an office in charge of himself or a deputy at Athens, at Columbus, and at Rome, which shall be kept open at all times for the transaction of the business of the court.

Terms.

Offices.

Southern district. Divisions.

The *southern district* shall include the territory embraced on the said first day of July, nineteen hundred and ten, in the counties of Appling, Bulloch, Bryan, Camden, Chatham, Emanuel, Effingham, Glynn, Jeff Davis, Liberty, Montgomery, McIntosh, Screven, Tatnall, Toombs, and Wayne, which shall constitute the eastern division of said district; also the territory embraced on the date last mentioned in the counties of Baldwin, Bibb, Butts, Crawford, Dodge, Dooly, Hancock, Houston, Jasper, Jones, Laurens, Macon, Monroe, Pike, Pulaski, Putnam, Sumter, Telfair, Twiggs, Upson, Wilcox, and Wilkinson, which shall constitute the western division; also the territory embraced on the date last mentioned in the counties of Burke, Columbia, Glascock, Jefferson, Jenkins, Johnson, Lincoln, McDuffie, Richmond, Taliaferro, Washington, Wilkes, and

Warren, which shall constitute the northeastern division; also the territory embraced on the date last mentioned in the counties of Berrien, Brooks, Charlton, Clinch, Coffee, Decatur, Echols, Grady, Irwin, Lowndes, Pierce, Thomas, and Ware, which shall constitute the southwestern division; and also the territory embraced on the date last mentioned in the counties of Baker, Ben Hill, Calhoun, Crisp, Colquitt, Dougherty, Lee, Miller, Mitchell, Tift, Turner, and Worth, which shall constitute the Albany division. Terms of the district court for the western division shall be held at Macon on the first Mondays in May and October; for the eastern division, at Savannah on the second Tuesdays in February, May, August, and November; for the northeastern division, at Augusta on the first Monday in April and the third Monday in November; for the southwestern division, at Valdosta on the second Mondays in June and December; and for the Albany division, at Albany on the third Mondays in June and December. (*36 Stat. L., 1108.*)

Terms.

In several acts authorizing the holding of terms of court at Athens, Albany, Rome, and Valdosta there were provisions requiring free accommodations to be furnished for that purpose. Since then Federal buildings have been erected in those cities, so that those provisions have become obsolete and are omitted. The act of April 7, 1904 (33 Stat., 161), fixed the time for holding the spring term at Athens on the fourth Monday in April. Upon the recommendation of the district judge and the district attorney this has been changed to the second Monday in April. Otherwise the section states what was the existing law.

The section was amended as here given by the act of March 4, 1913, which provided for terms of court at Gainsville by inserting the matter in brackets.

Idaho.

SEC. 78. The State of Idaho shall constitute one judicial district, to be known as the district of Idaho. It is divided into four divisions, to be known as the northern, central, southern, and eastern divisions. The territory embraced on the first day of July, nineteen hundred and ten, in the counties of Bonner, Kootenai, and Shoshone, shall constitute the northern division of said district; and the territory embraced on the date last mentioned in the counties of Idaho, Latah, and Nez Perce, shall constitute the central division of said district; and the territory embraced on the date last mentioned in the counties of Ada, Boise, Blaine, Cassia, Twin Falls, Canyon, Elmore, Lincoln, Owyhee, and Washington, shall constitute the southern division of said district; and the territory embraced on the date last mentioned in the counties of Bannock, Bear Lake, Bingham, Custer, Fremont, Lemhi, and Oneida, shall constitute the eastern division of said district. Terms of the district court for the northern division of said district shall be held at Coeur d'Alene City on the fourth Monday in May and the third Monday in November; for the central division, at Moscow on the second Monday in May and the first Monday in November; for the southern division, at Boise City on the second Mondays in February and September; and for the eastern division, at Pocatello on the second Mondays in March and October. The clerk of the court shall maintain an office in charge of himself or a deputy at Coeur d'Alene City, at Moscow, at Boise City, and at Pocatello, which shall be open at all times for the transaction of the business of the court. (*36 Stat. L., 1109.*)

3 July, 1890, 26 Stat. L., 217, c. 656, s. 16; 1 Supp., 767. 5 July, 1892, 27 Stat. L., 72, c. 145; 2 Supp., 28. 3 Nov., 1893, 28 Stat. L., 5, c. 9; 2 Supp., 150. 1 June, 1898, 30 Stat. L., 423, c. 369; 2 Supp., 768. 23 Feb., 1911, 36 Stat. L., 927, c. 148.

Terms.

Offices.

In defining the judicial divisions of Idaho (act of June 1, 1898; 2 Supp., 768), Indian reservations were included by the words "including any and all Indian reservations in said territory." In lieu of this language the names of the counties in which the reservations lie are given. Otherwise the section states what was existing law.

Illinois.

SEC. 79. The State of Illinois is divided into three districts, to be known as the northern, southern, and eastern districts of Illinois. The *northern district* shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Cook, Dekalb, Dupage, Grundy, Kane, Kendall, Lake, Lasalle, McHenry, and Will, which shall constitute the eastern division; also the territory

R. S., ss. 536, 572. 2 Mar., 1887, 24 Stat. L., 442, c. 315; 1 Supp., 552. 8 Aug., 1888, 25 Stat. L., 387, c. 788; 1 Supp., 606.

2 July, 1890, 26 Stat. L., 212, c. 651; 1 Supp., 764. 31 July, 1894, 28 Stat. L., 204, c. 174; 2 Supp., 212. 28 Apr., 1904, 33 Stat. L., 550, c. 1805. 3 Mar., 1905, 33 Stat. L., 992, c. 1427. 8 Feb., 1907, 34 Stat. L., 882, c. 893.

embraced on the date last mentioned in the counties of Boone, Carroll, Jo Daviess, Lee, Ogle, Stephenson, Whiteside, and Winnebago, which shall constitute the western division. Terms of the district court for the eastern division shall be held at Chicago on the first Mondays in February, March, April, May, June, July, September, October, and November, and the third Monday in December; and for the western division, at Freeport on the third Mondays in April and October. The clerk of the court for the northern district shall maintain an office in charge of himself or a deputy at Chicago and at Freeport, which shall be kept open at all times for the transaction of the business of the court. The marshal for the northern district shall maintain an office in the division in which he himself does not reside and shall appoint at least one deputy who shall reside therein. The *southern district* shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Bureau, Fulton, Henderson, Henry, Knox, Livingston, McDonough, Marshall, Mercer, Putnam, Peoria, Rock Island, Stark, Tazewell, Warren, and Woodford, which shall constitute the northern division; also the territory embraced on the date last mentioned in the counties of Adams, Bond, Brown, Calhoun, Cass, Christian, Dewitt, Greene, Hancock, Jersey, Logan, McLean, Macon, Macoupin, Madison, Mason, Menard, Montgomery, Morgan, Pike, Sangamon, Schuyler, and Scott, which shall constitute the southern division. Terms of the district court for the northern division shall be held at Peoria on the third Mondays in April and October; for the southern division, at Springfield on the first Mondays in January and June, and at Quincy on the first Mondays in March and September. The clerk of the court for the southern district shall maintain an office in charge of himself or a deputy at Peoria, at Springfield, and at Quincy, which shall be kept open at all times for the transaction of the business of the court. The marshal for said southern district shall appoint at least one deputy residing in the said northern division, who shall maintain an office at Peoria. The *eastern district* shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Alexander, Champaign, Clark, Clay, Clinton, Coles, Crawford, Cumberland, Douglas, Edgar, Edwards, Effingham, Fayette, Ford, Franklin, Gallatin, Hamilton, Hardin, Iroquois, Jackson, Jasper, Jefferson, Johnson, Kankakee, Lawrence, Marion, Massac, Monroe, Moultrie, Perry, Piatt, Pope, Pulaski, Randolph, Richland, Saint Clair, Saline, Shelby, Union, Vermilion, Wabash, Washington, Wayne, White, and Williamson. Terms of the district court for the eastern district shall be held at Danville on the first Mondays in March and September; at Cairo on the first Mondays in April and October; and at East Saint Louis on the first Mondays in May and November. The clerk of the court for the eastern district shall maintain an office in charge of himself or deputy at Danville, at Cairo, and at East Saint Louis, which shall be kept open at all times for the transaction of the business of the court, and shall there keep the records, files, and documents pertaining to the court at that place. (*36 Stat. L., 1110.*)

Offices. Southern district. Divisions. Terms. Offices. Eastern district. Terms. Offices.

Acting under the authority of section 918, Revised Statutes, the district judge for the northern district of Illinois has appointed special terms of court to be held at Chicago on the first Mondays in February, March, April, May, June, September, October and November, in addition to the regular July and December terms. The district judge and the district attorney joined in recommending that these special terms be carried into the revision as regular terms, which has been done.

See Petri *v.* Creelman Lumber Co., 199 U. S., 487.

Indiana.

R. S., ss. 531, 559, 572, 577, 579, 580, 584, 585, 625, 743, 815.

SEC. 80. The State of Indiana shall constitute one judicial district, to be known as the district of Indiana. Terms of the district court shall be held at Indianapolis on the first Tuesdays in May and November; at New Albany on the first Mondays in January and July; at

Evansville on the first Mondays in April and October; at Fort Wayne on the second Tuesdays in June and December; and at Hammond on the third Tuesdays in April and October. The clerk of the court shall appoint four deputy clerks, one of whom shall reside and keep his office at New Albany, one at Evansville, one at Fort Wayne, and one at Hammond. Each deputy shall keep in his office full records of all actions and proceedings of the district court held at that place. (*36 Stat. L., 1110.*)

23 June, 1874, 18 Stat. L., 251, c. 463; 1 Supp., 46.
3 Mar., 1881, 21 Stat. L., 511, c. 154; 1 Supp., 327.
14 Feb., 1899, 30 Stat. L., 836, c. 155; 2 Supp., 942.

This section states in concise terms what was the existing law.

Iowa.

"SEC. 81. The State of Iowa is divided into two judicial districts, to be known as the northern and southern districts of Iowa. The *northern district* shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Allamakee, Dubuque, Buchanan, Clayton, Delaware, Fayette, Winneshiek, Howard, Chickasaw, Bremer, Blackhawk, Floyd, Mitchell, and Jackson, which shall constitute the eastern division of said district; also the territory embraced on the date last mentioned in the counties of Jones, Cedar, Linn, Johnson, Iowa, Benton, Tama, Grundy, and Hardin, which shall constitute the Cedar Rapids division; also the territory embraced on the date last mentioned in the counties of Emmet, Palo Alto, Pocahontas, Calhoun, Carroll, Kossuth, Humboldt, Webster, Winnebago, Hancock, Wright, Hamilton, Worth, Cerro Gordo, Franklin, and Butler, which shall constitute the central division; also the territory embraced on the date last mentioned in the counties of Dickinson, Clay, Buena Vista, Sac, Osceola, O'Brien, Cherokee, Ida, Lyon, Sioux, Plymouth, Woodbury, and Monona, which shall constitute the western division. Terms of the district court for the eastern division shall be held at Dubuque on the fourth Tuesday in April and the first Tuesday in December, and at Waterloo on the second Tuesdays in May and September; for the Cedar Rapids division, at Cedar Rapids on the first Tuesday in April and the fourth Tuesday in September; for the central division at Fort Dodge on the second Tuesdays in June and November; and for the western division, at Sioux City on the fourth Tuesday in May and the third Tuesday in October. The *southern district* shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Louisa, Henry, Des Moines, Lee, and Van Buren, which shall constitute the eastern division of said district; also the territory embraced on the date last mentioned in the counties of Marshall, Story, Boone, Greene, Guthrie, Dallas, Polk, Jasper, Poweshiek, Marion, Warren, and Madison, which shall constitute the central division of said district; also the territory embraced on the date last mentioned in the counties of Crawford, Harrison, Shelby, Audubon, Cass, Pottawattamie, Mills, and Montgomery, which shall constitute the western division of said district; also the territory embraced on the date last mentioned in the counties of Adair, Adams, Clarke, Decatur, Fremont, Lucas, Page, Ringgold, Taylor, Union, and Wayne, which shall constitute the southern division of said district; also the territory embraced on the date last mentioned in the counties of Scott, Muscatine, Washington, and Clinton, which shall constitute the Davenport division of said district; also the territory embraced on the date last mentioned in the counties of Davis, Appanoose, Mahaska, Keokuk, Jefferson, Monroe, and Wapello, which shall constitute the Uttumwa division of said district. Terms of the district court for the eastern division shall be held at Keokuk on the second Tuesday in April and the third Tuesday in October; for the central division, at Des Moines on the second Tuesday in May and the third Tuesday in November; for the western division, at Council Bluffs on the second Tuesday in March and the third Tuesday in September; for the southern division, at Creston on the fourth Tuesday in March and

R. S., ss. 537, 572.
20 July, 1882, 22 Stat. L., 172, c. 312; 1 Supp., 358.
19 Apr., 1888, 25 Stat. L., 87, c. 127; 1 Supp., 584.
24 Feb., 1891, 26 Stat. L., 767, c. 282; 1 Supp., 895.
4 Jan., 1896, 29 Stat. L., 2, c. 3; 2 Supp., 443.
1 June, 1900, 31 Stat. L., 249, c. 601; 2 Supp., 1184.
28 Apr., 1904, 33 Stat. L., 546, c. 1800.
21 Apr., 1906, 34 Stat. L., 127, c. 1648.
19 June, 1906, 34 Stat. L., 304, c. 3437.
20 Feb., 1907, 34 Stat. L., 912, c. 1137.
20 Feb., 1907, 34 Stat. L., 913, c. 1138.
3 Mar., 1913, 37 Stat. L., —, c. —.
Terms.

Southern district. Divisions.

Terms.

the first Tuesday in November; for the Davenport division, at Davenport on the fourth Tuesday in April and the first Tuesday in October; and for the Ottumwa division, at Ottumwa on the first Monday after the fourth Tuesday in March, and the first Monday after the third Tuesday in October. The clerk of the court for said district shall maintain an office in charge of himself or a deputy at Davenport and at Ottumwa, for the transaction of the business of said divisions." (*36 Stat. L., 1111.*)

Offices.

This section states in concise terms what was the existing law. It was amended as here given by the act of March 3, 1913, which transferred the county of Carroll from the southern district to the central division of the northern district, with terms of court at Fort Dodge.

Kansas.

R. S., ss. 531, 572, 658.
3 Mar., 1879, 20 Stat. L., 355, c. 177; 1 Supp., 245.
9 Aug., 1888, 25 Stat. L., 392, c. 817; 1 Supp., 608.
9 June, 1890, 26 Stat. L., 129, c. 403; 1 Supp., 744.
3 May, 1892, 27 Stat. L., 24, c. 59; 2 Supp., 12.
2 Mar., 1895, 28 Stat. L., 806, c. 177; 2 Supp., 417.
19 Feb., 1903, 32 Stat. L., 849, c. 709.

SEC. 82. The State of Kansas shall constitute one judicial district, to be known as the district of Kansas. It is divided into three divisions, to be known as the first, second, and third divisons of the district of Kansas. The first division shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Atchison, Brown, Chase, Cheyenne, Clay, Cloud, Decatur, Dickinson, Doniphan, Douglas, Ellis, Franklin, Geary, Gove, Graham, Jackson, Jefferson, Jewell, Johnson, Leavenworth, Lincoln, Logan, Lyon, Marion, Marshall, Mitchell, Morris, Nemaha, Norton, Osage, Osborne, Ottawa, Phillips, Pottawatomie, Rawlins, Republic, Riley, Rooks, Russell, Saline, Shawnee, Sheridan, Sherman, Smith, Thomas, Trego, Wabaunsee, Wallace, Washington, and Wyandotte. The second division shall include the territory embraced on the date last mentioned in the counties of Barber, Barton, Butler, Clark, Comanche, Cowley, Edwards, Ellsworth, Finney, Ford, Grant, Gray, Greeley, Hamilton, Harper, Harvey, Hodgeman, Haskell, Kingman, Kiowa, Kearny, Lane, McPherson, Morton, Meade, Ness, Pratt, Pawnee, Reno, Rice, Rush, Scott, Sedgwick, Stafford, Stevens, Seward, Sumner, Stanton, and Wichita. The third division shall include the territory embraced on the said date last mentioned in the counties of Allen, Anderson, Bourbon, Cherokee, Coffey, Chautauqua, Crawford, Elk, Greenwood, Labette, Linn, Miami, Montgomery, Neosho, Wilson, and Woodson. Terms of the district court for the first division shall be held at Leavenworth on the second Monday in October; at Topeka on the second Monday in April; at Kansas City on the second Monday in January and the first Monday in October; and at Salina on the second Monday in May; but no cause, action, or proceeding shall be tried or considered at any term held at Salina unless by consent of all the parties thereto, or by order of the court for cause. Terms of the district court for the second division shall be held at Wichita on the second Mondays in March and September; and for the third division, at Fort Scott on the first Monday in May and the second Monday in November. The clerk of the district court shall appoint two deputies, one of whom shall reside and keep his office at Fort Scott, and the other at Wichita; and the marshal shall appoint a deputy who shall reside and keep his office at Fort Scott. (*36 Stat. L., 1112.*)

Terms.

Offices.

The provision in the act of August 9, 1888 (25 Stat., 392), that the clerk and marshal shall each appoint a deputy who shall reside at Salina, upon the recommendation of the district attorney, is omitted as obsolete, as court is very rarely held at Salina and such deputies are not now maintained there. The provision in the act of February 19, 1903 (32 Stat., 849), that, "but a jury shall not attend said October term (at Kansas City) excepting upon the order of the court, and a grand jury shall not attend either of said terms except upon the order of the district court," is also omitted, the district attorney saying that the court always orders grand and petit juries for every term of court held at Kansas City, Kansas. The retention of the provision was therefore considered useless.

See Caha *v.* U. S., 152 U. S., 211; Mattox *v.* U. S., 156 U. S., 237.

Kentucky.

SEC. 83. The State of Kentucky is divided into two districts, to be known as the eastern and western districts of Kentucky. The *eastern district* shall include the territory embraced, on the first day of July, nineteen hundred and ten, in the counties of Carroll, Trimble, Henry, Shelby, Anderson, Mercer, Boyle, Gallatin, Boone, Kenton, Campbell, Pendleton, Grant, Owen, Franklin, Bourbon, Scott, Woodford, Fayette, Jessamine, Garrard, Madison, Lincoln, Rockcastle, Pulaski, Wayne, Whitley, Bell, Knox, Harlan, Laurel, Clay, Leslie, Letcher, Perry, Owsley, Jackson, Estill, Lee, Breathitt, Knott, Pike, Floyd, Magoffin, Martin, Johnson, Lawrence, Boyd, Greenup, Carter, Elliott, Morgan, Wolfe, Powell, Menifee, Clark, Montgomery, Bath, Rowan, Lewis, Fleming, Mason, Bracken, Robertson, Nicholas, and Harrison, with the waters thereof. Terms of the district court for the eastern district shall be held at Frankfort on the second Monday in March and the fourth Monday in September; at Covington on the first Monday in April and the third Monday in October; at Richmond on the fourth Monday in April and the second Monday in November; at London on the second Monday in May and the fourth Monday in November; at Catlettsburg on the fourth Monday in May and the second Monday in December; and at Jackson on the first Monday in March and the third Monday in September: *Provided*, That suitable rooms and accommodations are furnished for holding court at Jackson free of expense to the Government until such time as a public building shall be erected there. The *western district* shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Oldham, Jefferson, Spencer, Bullitt, Nelson, Washington, Marion, Larue, Taylor, Casey, Green, Adair, Russell, Clinton, Cumberland, Monroe, Metcalfe, Allen, Barren, Simpson, Logan, Warren, Butler, Hart, Edmonson, Grayson, Hardin, Meade, Breckenridge, Hancock, Daviess, Ohio, McLean, Muhlenberg, Todd, Christian, Trigg, Lyon, Caldwell, Livingston, Crittenden, Hopkins, Webster, Henderson, Union, Marshall, Calloway, McCracken, Graves, Ballard, Carlisle, Hickman, and Fulton, with the waters thereof. Terms of the district court for the western district shall be held at Louisville on the second Mondays in March and October; at Owensboro on the first Monday in May and the fourth Monday in November; at Paducah on the third Mondays in April and November; and at Bowling Green on the third Monday in May and the second Monday in December. The clerk of the court for the eastern district shall maintain an office in charge of himself or a deputy at Frankfort, at Covington, at Richmond, at London, at Catlettsburg, and at Jackson; and the clerk for the western district shall maintain an office in charge of himself or a deputy at Louisville, at Owensboro, at Paducah, and at Bowling Green, each of which offices shall be kept open at all times for the transaction of the business of said court. The clerks of the courts for the eastern and western districts, upon issuing original process in a civil action, shall make it returnable to the court nearest to the county of the residence of the defendant, or of that defendant whose county is nearest to a court, and shall, immediately upon payment by the plaintiff of his fees accrued, send the papers filed to the clerk of the court to which the process is made returnable; and whenever the process is not thus made returnable, any defendant may, upon motion, on or before the calling of the cause, have it transferred to the court to which it should have been sent had the clerk known the residence of the defendant when the action was brought. (*36 Stat. L., 1112.*)

R. S., ss. 557, 579, 580, 745, 815. 8 Aug., 1888, 25 Stat. L., 389, c. 792; 1 Supp., 607. 12 Feb., 1901, 31 Stat. L., 781, c. 355; 2 Supp., 1479. 10 Mar., 1902, 32 Stat. L., 58, c. 144. 22 May, 1908, 35 Stat. L., 182, c. 184.

Terms.

Rooms at Jackson.

Western district.

Terms.

Offices.

Return of process in civil actions.

With the exception of the reduction of the number of clerks in each of the judicial districts, as explained in the general notes at the beginning of this chapter, this section states in concise terms what was the existing law.

Louisiana.

R. S., ss. 531, 572, 579.
3 Mar., 1881, 21 Stat. L., 507, c. 144; 1 Supp., 325.
8 Aug., 1888, 25 Stat. L., 388, c. 789; 1 Supp., 606.
13 Aug., 1888, 25 Stat. L., 438, c. 869; 1 Supp., 615.
18 May, 1900, 31 Stat. L., 179, c. 481; 2 Supp., 1171.
2 Mar., 1905, 33 Stat. L., 841, c. 1308.

SEC. 84. The State of Louisiana is divided into two judicial districts, to be known as the eastern and western districts of Louisiana. The *eastern district* shall include the territory embraced on the first day of July, nineteen hundred and ten, in the parishes of Assumption, Iberia, Jefferson, Lafourche, Orleans, Plaquemines, Saint Bernard, Saint Charles, Saint James, Saint John the Baptist, Saint Mary, Saint Tammany, Tangipahoa, Terrebonne, and Washington, which shall constitute the New Orleans division; also the territory embraced on the date last mentioned in the parishes of Ascension, East Baton Rouge, East Feliciana, Livingston, Pointe Coupee, Saint Helena, West Baton Rouge, Iberville, and West Feliciana, which shall constitute the Baton Rouge division of said district.

Terms.

Terms of the district court for the New Orleans division shall be held at New Orleans on the third Mondays in February, May, and November; and for the Baton Rouge division, at Baton Rouge on the second Mondays in April and November.

Offices.

The clerk of the court for the eastern district shall maintain an office in charge of himself or a deputy at New Orleans and at Baton Rouge which shall be kept open at all times for the transaction of the business of the court.

Western district. Divisions.

The *western district* shall include the territory embraced on the first day of July, nineteen hundred and ten, in the parishes of Saint Landry, Evangeline, Saint Martin, Lafayette, and Vermilion, which shall constitute the Opelousas division of said district; also the territory embraced on the date last mentioned in the parishes of Rapides, Avoyelles, Catahoula, La Salle, Grant, and Winn, which shall constitute the Alexandria division of said district; also the territory embraced on the said date last mentioned in the parishes of Caddo, De Soto, Bossier, Webster, Claiborne, Bienville, Natchitoches, Sabine, and Red River, which shall constitute the Shreveport division of said district; also the territory embraced on the date last mentioned in the parishes of Ouachita, Franklin, Richland, Morehouse, East Carroll, West Carroll, Madison, Tensas, Concordia, Union, Caldwell, Jackson, and Lincoln, which shall constitute the Monroe division of said district; also the territory embraced on the date last mentioned in the parishes of Acadia, Calcasieu, Cameron, and Vernon, which shall constitute the Lake Charles division of said district.

Terms.

Terms of the district court for the Opelousas division shall be held at Opelousas on the first Mondays in January and June; for the Alexandria division, at Alexandria on the fourth Mondays in January and June; for the Shreveport division, at Shreveport on the third Mondays in February and October; for the Monroe division, at Monroe on the first Mondays in April and October; and for the Lake Charles division, at Lake Charles on the third Mondays in May and December.

Offices.

The clerk of the court for the western district shall maintain an office in charge of himself or a deputy at Opelousas, at Alexandria, at Shreveport, at Monroe, and at Lake Charles, which shall be kept open at all times for the transaction of the business of the court. (*36 Stat. L., 1113.*)

In the act of August 13, 1888 (1 Supp., 606), dividing the western district of Louisiana into divisions, and fixing the places at which process issued in cases arising in certain counties, and in later acts of a similar character, no specific name is given the divisions created. Unless some specific name is given them it is difficult to describe them. Since it is the general policy of Congress, as a matter of necessity for simple reference, to give some definite name to each division created, they have been given the name of the city at which the court for the division is held.

Maine.

R. S., ss. 531, 572.
18 Jan., 1884, 23 Stat. L., 1, c. 1; 1 Supp., 423.
22 Dec., 1911, 37 Stat. L., 51, c. 7.

SEC. 85. The State of Maine shall constitute one judicial district, to be known as the district of Maine. Terms of the district court shall be held at the times and places following: At Portland, on the first Tuesday in April, on the third Tuesday in September, and on the second Tuesday in December; at Bangor, on the first Tuesday in

June: *Provided, however*, That in the year nineteen hundred and twelve a session shall be also held at Portland on the first Tuesday in February. (*36 Stat. L., 1114.*)

As originally enacted this section stated concisely what was the existing law. The amendment of December 22, 1911, is now included.

Maryland.

R. S., ss. 531, 572. 21 Mar., 1892, 27 Stat. L., 11, c. 20; 2 Supp., 5.

SEC. 86. The State of Maryland shall constitute one judicial district, to be known as the district of Maryland. Terms of the district court shall be held at Baltimore on the first Tuesdays in March, June, September, and December; and at Cumberland on the second Monday in May and the last Monday in September. The clerk of the court shall appoint a deputy who shall reside and maintain an office at Cumberland, unless the clerk shall himself reside there; and the marshal shall also appoint a deputy, who shall reside and maintain an office at Cumberland, unless he shall himself reside there. (*36 Stat. L., 1114.*)

This section states concisely what was the existing law.

Massachusetts.

R. S., ss. 531, 572. 2 Mar., 1909, 35 Stat. L., 685, c. 240.

Rooms at Springfield.

SEC. 87. The State of Massachusetts shall constitute one judicial district, to be known as the district of Massachusetts. Terms of the district court shall be held at Boston on the third Tuesday in March, the fourth Tuesday in June, the second Tuesday in September, and the first Tuesday in December; and at Springfield, on the second Tuesdays in May and December: *Provided*, That suitable rooms and accommodations for holding court at Springfield shall be furnished free of expense to the Government until such time as a federal building shall be erected there for that purpose. The marshal and the clerk for said district shall each appoint at least one deputy, to reside in Springfield and to maintain an office at that place. (*36 Stat. L., 1114.*)

This section states in concise terms what was the existing law.

Michigan.

R. S., ss. 538, 572, 579. 19 June, 1878, 20 Stat. L., 175, c. 326; 1 Supp., 198. 28 Feb., 1887, 24 Stat. L., 423, c. 269; 1 Supp., 543. 30 Apr., 1894, 28 Stat. L., 67, c. 66; 2 Supp., 181. 9 July, 1912, 37 Stat. L., 190, c. 222.

SEC. 88. The State of Michigan is divided into two judicial districts, to be known as the eastern and western districts of Michigan. The *eastern district* shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Alcona, Alpena, Arenac, Bay, Cheboygan, Clare, Crawford, Genesee, Gladwin, Gratiot, Huron, Iosco, Isabella, Midland, Montmorency, Ogemaw, Oscoda, Otsego, Presque Isle, Roscommon, Saginaw, Shiawassee, and Tuscola, which shall constitute the northern division; also the territory embraced on the date last mentioned in the counties of Branch, Calhoun, Clinton, Hillsdale, Ingham, Jackson, Lapeer, Lenawee, Livingston, Macomb, Monroe, Oakland, St. Clair, Sanilac, Washtenaw, and Wayne, which shall constitute the southern division of said district.

Terms.

Terms of the district court for the southern division shall be held at Detroit on the first Tuesdays in March, June, and November; for the northern division, at Bay City on the first Tuesdays in May and October, and at Port Huron in the discretion of the judge of said court and at such times as he shall appoint therefor. There shall also be held a special or adjourned term of the district court at Bay City for the hearing of admiralty causes, beginning in the month of February in each year.

Western district. Divisions.

The *western district* shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Alger, Baraga, Chippewa, Delta, Dickinson, Gogebic, Houghton, Iron, Keweenaw, Luce, Mackinac, Marquette, Menominee, Ontonagon, and Schoolcraft, which shall constitute the northern division; also the territory embraced on the said date last mentioned in the counties of Allegan, Antrim, Barry, Benzie, Berrien, Cass, Charlevoix, Eaton, Emmet, Grand Traverse, Ionia, Kalamazoo, Kalkaska, Kent, Lake, Leelanau, Manistee, Mason, Mecosta, Missaukee, Montcalm, Muskegon, Newaygo, Oceana, Osceola, Ottawa, St. Joseph, Van Buren, and Wexford, which shall constitute

Terms. (See amendment below.)

the southern division of said district. (Terms of the district court for the southern division shall be held at Grand Rapids on the first Tuesdays in March and October; and for the northern division, at Marquette on the first Tuesdays in May and September.) All issues of fact shall be tried at the terms held in the division where such suit shall be commenced.

Actions in rem.

Actions in rem and admiralty may be brought in whichever division of the eastern district service can be had upon the res. Nothing herein contained shall prevent the district court of the western division from regulating, by general rule, the venue of transitory actions either at law or in equity, or from changing the same for cause.

Offices.

The clerk of the court for the western district shall reside and keep his office at Grand Rapids, and shall also appoint a deputy clerk for said court held at Marquette, who shall reside and keep his office at that place. The marshal for said western district shall keep an office and a deputy marshal at Marquette. The clerk of the court for the eastern district shall keep his office at the city of Detroit, and shall appoint a deputy for the court held at Bay City, who shall reside and keep his office at that place. The marshal for said district shall keep an office and a deputy marshal at Bay City, and mileage on service of process in said northern division shall be computed from Bay City. (*36 Stat. L., 1114.*)

This section stated concisely what was the existing law on the date of the enactment of this code. The time for holding terms of court for the western district was changed by the act of July 9, 1912, which is as follows:

AN ACT To fix the terms of the District Court for the Western District of Michigan.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the terms of the District Court for the Western District of Michigan for the southern division shall be held at Grand Rapids, commencing on the first Tuesdays in March, June, October, and December; and for the northern division at Marquette, commencing on the second Tuesdays of April and September; and at Sault Sainte Marie commencing on the second Tuesdays in January and July."

Minnesota.

R. S., ss. 531, 572. 26 Apr., 1890, 26 Stat. L., 72, c. 167; 1 Supp., 718. 9 Feb., 1904, 33 Stat. L., 11, c. 153.

SEC. 89. The State of Minnesota shall constitute one judicial district, to be known as the district of Minnesota. It is divided into six divisions, to be known as the first, second, third, fourth, fifth, and sixth divisions. The first division shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Winona, Wabasha, Olmsted, Dodge, Steele, Mower, Fillmore, and Houston. The second division shall include the territory embraced on the date last mentioned in the counties of Freeborn, Faribault, Martin, Jackson, Nobles, Rock, Pipestone, Murray, Cottonwood, Watonwan, Blue Earth, Waseca, Lesueur, Nicollet, Brown, Redwood, Lyon, Lincoln, Yellow Medicine, Sibley, and Lac qui Parle. The third division shall include the territory embraced on the date last mentioned in the counties of Chisago, Washington, Ramsey, Dakota, Goodhue, Rice, and Scott. The fourth division shall include the territory embraced on the date last mentioned in the counties of Hennepin, Wright, Meeker, Kandiyohi, Swift, Chippewa, Renville, McLeod, Carver, Anoka, Sherburne, and Isanti. The fifth division shall include the territory embraced on the date last mentioned in the counties of Cook, Lake, Saint Louis, Itasca, Koochiching, Cass, Crow Wing, Aitkin, Carlton, Pine, Kanabec, Mille Lacs, Morrison, and Benton. The sixth division shall include the territory embraced on the date last mentioned in the counties of Stearns, Pope, Stevens, Bigstone, Traverse, Grant, Douglas, Todd, Ottertail, Roseau, Wilkin, Clay, Becker, Wadena, Norman, Polk, Red Lake, Marshall, Kittson, Beltrami, Clearwater, Mahnomen, and Hubbard.

Terms.

Terms of the dis-

trict court for the first division shall be held at Winona on the third Tuesdays in May and November; for the second division, at Mankato on the fourth Tuesdays in April and October; for the third division, at Saint Paul on the first Tuesdays in June and December; for the fourth division, at Minneapolis on the first Tuesdays in April and October; for the fifth division, at Duluth on the second Tuesdays in January and July; and for the sixth division, at Fergus Falls on the first Tuesday in May and second Tuesday in November. The clerk of the district court shall appoint a deputy clerk at each place where the court is now required to be held at which the clerk shall not himself reside, who shall keep his office and reside at the place appointed for the holding of said court. (*36 Stat. L., 1115.*)

Offices.

This section states concisely what was the existing law.
See Post *v.* U. S., 161 U. S., 583.

Mississippi.

"SEC. 90. The State of Mississippi is divided into two judicial districts, to be known as the northern and southern districts of Mississippi. The *northern district* shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Alcorn, Attala, Chickasaw, Choctaw, Clay, Itawamba, Lee, Lowndes, Monroe, Oktibbeha, Pontotoc, Prentiss, Tishomingo, and Winston, which shall constitute the eastern division of said district; also the territory embraced on the date last mentioned in the counties of Benton, Calhoun, Carroll, De Soto, Grenada, Lafayette, Marshall, Montgomery, Panola, Tate, Tippah, Union, Webster, and Yalobusha, which shall constitute the western division of said district; also the territory embraced on the date last mentioned in the counties of Bolivar, Coahoma, Leflore, Quitman, Sunflower, Tallahatchie, and Tunica, which shall constitute the Delta division of said district. The *terms* of the district court for the eastern division shall be held at Aberdeen on the first Mondays in April and October; and for the western division, at Oxford on the first Mondays in June and December; and for the Delta division, at Clarksdale on the fourth Mondays in January and July: *Provided*, That suitable rooms and accommodations for holding court at Clarksdale are furnished free of expense to the United States. The *southern district* shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Adams, Amite, Copiah, Covington, Franklin, Hinds, Holmes, Jefferson, Jefferson Davis, Lawrence, Lincoln, Madison, Pike, Rankin, Simpson, Smith, Scott, Wilkinson, and Yazoo, which shall constitute the Jackson division; also the territory embraced on the date last mentioned in the counties of Claiborne, Issaquena, Sharkey, Warren, and Washington, which shall constitute the western division; also the territory embraced on the date last mentioned in the counties of Clarke, Jones, Jasper, Kemper, Lauderdale, Leake, Neshoba, Newton, Noxubee, and Wayne, which shall constitute the eastern division; also the territory embraced on the date last mentioned in the counties of Forrest, Greene, Hancock, Harrison, Jackson, Lamar, Marion, Perry, and Pearl River, which shall constitute the southern division of said district. Terms of the district court for the Jackson division shall be held at Jackson on the first Mondays in May and November; for the western division, at Vicksburg on the first Mondays in January and July; for the eastern division, at Meridian on the second Mondays in March and September; and for the southern division, at Biloxi on the third Mondays in February and August. The clerk of the court for each district shall maintain an office in charge of himself or a deputy at each place in his district at which court is now required to be held at which he shall not himself reside, which shall be kept open at all times for the transaction of the business of the court. The marshal for each of said districts shall maintain an office in charge

R. S., ss. 539, 552, 572, 658.
15 June, 1882, 22 Stat. L., 101, c. 218; 1 Supp., 344.
8 July, 1886, 24 Stat. L., 127, c. 745; 1 Supp., 500.
28 Feb., 1887, 24 Stat. L., 439, c. 279; 1 Supp., 547.
4 Apr., 1888, 25 Stat. L., 78, c. 58; 1 Supp., 583.
11 Apr., 1888, 25 Stat. L., 84, c. 81; 1 Supp., 584.
6 Feb., 1889, 25 Stat. L., 655, c. 113; 1 Supp., 638.
18 July, 1894, 28 Stat. L., 114, c. 144; 2 Supp., 202.
2 Mar., 1899, 30 Stat. L., 977, c. 351; 2 Supp., 960.
2 Mar., 1899, 30 Stat. L., 995, c. 379; 2 Supp., 969.
24 Feb., 1911, 36 Stat. L., 932, c. 160.
5 Feb., 1912, 37 Stat. L., 59, c. 28.
27 May, 1912, 37 Stat. L., 118, c. 136.

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of himself or a deputy at each place of holding court in his district." (*36 Stat. L., 1116.*)

The section was amended to read as here given by the act of May 27, 1912. Section 572, Revised Statutes, fixed the time for holding terms of the district court at Jackson on the fourth Mondays in June and November; while section 658, Revised Statutes, fixed the time for holding terms of circuit court at that place on the first Mondays in May and November. For more than twenty years (so the district attorney states) the court, by order, has held the terms of the district court on the dates fixed for holding the circuit court, so that both courts might be held at the same time. Since the dates fixed for holding terms of the circuit court seem to be the ones preferred by the court, the section has been amended to conform to that preference.

Missouri.

R. S., ss. 540, 572. 28 Feb., 1887, 24 Stat. L., 424, c. 271; 1 Supp., 543. 1 Oct., 1888, 25 Stat. L., 498, c. 1056; 1 Supp., 622. 14 May, 1890, 26 Stat. L., 106, c. 202; 1 Supp., 738. 19 Apr., 1892, 27 Stat. L., 20, c. 50; 2 Supp., 10. 28 Jan., 1897, 29 Stat. L., 502, c. 106; 2 Supp., 544. 24 Jan., 1901, 31 Stat. L., 739, c. 164; 2 Supp., 1462. 8 Apr., 1904, 33 Stat. L., 164, c. 947. 31 Jan., 1905, 33 Stat. L., 626, c. 287. 4 Feb., 1907, 34 Stat. L., 875, c. 457. 16 May, 1910, 36 Stat. L., 370, c. 241. 22 June, 1910, 36 Stat. L., 585, c. 321. 22 June, 1910, 36 Stat. L., 587, c. 323. 7 Feb., 1911, 36 Stat. L., 897, c. 39. 22 Dec., 1911, 37 Stat. L., 51, c. 8.

SEC. 91. That the State of Missouri is divided into two judicial districts, to be known as the eastern and western districts of Missouri. The *eastern district* shall include the territory embraced on the first day of July, nineteen hundred and ten, in the city of Saint Louis and the counties of Audrain, Crawford, Dent, Franklin, Gasconade, Iron, Jefferson, Lincoln, Maries, Montgomery, Phelps, Saint Charles, Saint Francois, Sainte Genevieve, Saint Louis, Warren, and Washington, which shall constitute the eastern division of said district; also the territory embraced on the date last mentioned in the counties of Adair, Chariton, Clark, Knox, Lewis, Linn, Macon, Marion, Monroe, Pike, Ralls, Randolph, Schuyler, Scotland, and Shelby, which shall constitute the northern division of said district; also the territory embraced on the date last mentioned in the counties of Bollinger, Butler, Cape Girardeau, Carter, Dunklin, Madison, Mississippi, New Madrid, Pemiscot Perry, Reynolds, Ripley, Scott, Shannon, Stoddard, and Wayne, which shall constitute the southeastern division of said district. Terms of the district court for the eastern division shall be held at Saint Louis on the third Mondays in March and September, and at Rolla on the second Mondays in January and June: *Provided*, That suitable rooms and accommodations for holding court at Rolla are furnished free of expense to the United States; for the northern division at Hannibal on the fourth Monday in May and the first Monday in December; and for the southeastern division, at Cape Girardeau on the second Mondays in April and October. The *western district* shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Bates, Caldwell, Carroll, Cass, Clay, Grundy, Henry, Jackson, Johnson, Lafayette, Livingston, Mercer, Putnam, Ray, Saint Clair, Saline, and Sullivan, which shall constitute the western division; also the territory embraced on the date last mentioned in the counties of Barton, Barry, Jasper, Lawrence, McDonald, Newton, Stone, and Vernon, which shall constitute the southwestern division; also the territory embraced on the date last mentioned in the counties of Andrew, Atchison, Buchanan, Clinton, Daviess, Dekalb, Gentry, Holt, Harrison, Nodaway, Platte, and Worth, which shall constitute the Saint Joseph division; also the territory embraced on the date last mentioned in the counties of Benton, Boone, Callaway, Cooper, Camden, Cole, Hickory, Howard, Miller, Moniteau, Morgan, Osage, and Pettis, which shall constitute the central division; also the territory embraced on the date last mentioned in the counties of Christian, Cedar, Dade, Dallas, Douglas, Greene, Howell, Laclede, Oregon, Ozark, Polk, Pulaski, Taney, Texas, Webster, and Wright, which shall constitute the southern division. Terms of the district court for the western division shall be held at Kansas City on the fourth Monday in April and first Monday in November, and at Chillicothe on the fourth Monday in May and the first Monday in December: *Provided*, That suitable rooms and accommodations for holding court at Chillicothe are furnished free of expense to the United States; for the southwestern division, at Joplin on the second Mondays in June and

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January; for the Saint Joseph division, at Saint Joseph on the first Monday in March and third Monday in September; for the central division, at Jefferson City on the third Mondays in March and October; and for the southern division, at Springfield on the first Mondays in April and October. The clerk of the court at Saint Louis, in the eastern district, shall maintain an office in charge of himself or a deputy at Saint Louis and Hannibal and at such other places of holding court in said district as may be deemed necessary by the judge, which shall be kept open at all times for the transaction of the business of the court. The clerk of the court for the western district shall maintain an office in charge of himself or a deputy at Kansas City, at Jefferson City, at Saint Joseph, at Chillicothe, at Joplin, and at Springfield, which shall be kept open at all times for the transaction of the business of the court. The marshal for each district shall also maintain an office in charge of himself or a deputy at each place at which court is now held in his district. (*36 Stat. L., 1117.*)

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This section now includes the amendments made by the act of December 22, 1911, relating to the dates for holding terms for the eastern division at St. Louis and to the maintenance of a clerk's office at St. Louis and Hannibal.

Section 3, of the act of February 28, 1887 (24 Stat., 424), provided that terms of the district court should be held at Hannibal on the first Monday in May and November.

The act of April 19, 1888 (25 Stat., 88), provided that terms of the district court should be held at Hannibal on the fourth Monday in May and the first Monday in December, and repealed all laws inconsistent therewith. No reference was made in this act to the act of 1887.

Then the act of May 14, 1890 (26 Stat., 106), specifically amended section 3 of the act of 1887, without any reference to or repeal of the act of 1888, and provided that terms of the district court should be held at Hannibal on the first Monday in May and November, those being the dates previously fixed for holding terms of court at St. Louis.

As a matter of fact, the court for that district has treated the act of April 19, 1888, as being in force, irrespective of the act of 1890, and regular terms of the court have been held at Hannibal at the times fixed in the act of 1888 ever since that date, thus avoiding a conflict with the times fixed for holding court at St. Louis.

In view of the construction placed upon the act of 1888 by the court, the times fixed by it for holding court at Hannibal have been carried into the section.

The number of clerks in the western district has been reduced from four to one, as stated in the general notes on the chapter, and the deputy clerks provided in lieu thereof.

See Petri *v.* Creelman Lumber Co., 199 U. S., 496; The L. B. X., 88 Fed., 290.

Montana.

22 Feb., 1889, 25 Stat. L., 682, c. 180, s. 21; 1 Supp., 649.
7 July, 1898, 30 Stat. L., 685, c. 571; 2 Supp., 884.
27 Apr., 1904, 33 Stat. L., 313, c. 1610.

SEC. 92. The State of Montana shall constitute one judicial district, to be known as the district of Montana. Terms of the district court shall be held at Helena on the first Mondays in April and November; at Butte on the first Tuesdays in February and September; at Great Falls on the first Mondays in May and October; at Missoula on the first Mondays in January and June; and at Billings on the first Mondays in March and August. Causes, civil and criminal, may be transferred by the court or judge thereof from Helena to Butte or from Butte to Helena, or from Helena or Butte to Great Falls, or from Great Falls to Helena or Butte, in said district, when the convenience of the parties or the ends of justice would be promoted by the transfer; and any interlocutory order may be made by the court or judge thereof in either place. (*36 Stat. L., 1118.*)

Transfer of causes.

This section is a reenactment of existing law, except for the provisions for terms of court at Missoula and Billings.

Nebraska.

R. S., ss. 531, 572.
3 Aug., 1894, 28 Stat. L., 221, c. 194; 2 Supp., 222.
27 Feb., 1907, 34 Stat. L., 997, c. 2073.
12 Apr., 1910, 36 Stat. L., 294, c. 153.

SEC. 93. The State of Nebraska shall constitute one judicial district to be known as the district of Nebraska. Said district is divided into eight divisions. The territory embraced on the first day of July, nineteen hundred and ten, in the counties of Douglas, Sarpy, Washington, Dodge, Colfax, Platte, Nance, Boone, Wheeler, Burt, Thurston, Dakota, Cuming, Cedar, and Dixon, shall constitute the Omaha division; the territory embraced on the date last mentioned in the

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counties of Madison, Antelope, Knox, Pierce, Stanton, Wayne, Holt, Boyd, Rock, Brown, and Keya Paha, shall constitute the Norfolk division; the territory embraced on the date last mentioned in the counties of Cherry, Sheridan, Dawes, Box Butte, and Sioux, shall constitute the Chadron division; the territory embraced on the date last mentioned in the counties of Hall, Merrick, Howard, Greeley, Garfield, Valley, Sherman, Buffalo, Custer, Loup, Blaine, Thomas, Hooker, and Grant, shall constitute the Grand Island division; the territory embraced on the date last mentioned in the counties of Lincoln, Dawson, Logan, McPherson, Keith, Deuel, Garden, Morrill, Cheyenne, Kimball, Banner, and Scott's Bluff, shall constitute the North Platte division; the territory embraced on the date last mentioned in the counties of Cass, Otoe, Johnson, Nemaha, Pawnee, Richardson, Gage, Lancaster, Saunders, Butler, Seward, Saline, Jefferson, Thayer, Fillmore, York, Polk, and Hamilton, shall constitute the Lincoln division; the territory embraced on the date last mentioned in the counties of Clay, Nuckolls, Webster, Adams, Kearney, Franklin, Harlan, and Phelps, shall constitute the Hastings division; and the territory embraced on the date last mentioned in the counties of Gosper, Furnas, Red Willow, Frontier, Hayes, Hitchcock, Dundy,

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Chase, and Perkins, shall constitute the McCook division. Terms of the district court for the Omaha division shall be held at Omaha on the first Monday in April and the fourth Monday in September; for the Norfolk division, at Norfolk on the third Monday in September; for the Chadron division, at Chadron on the second Monday in September; for the Grand Island division, at Grand Island on the second Monday in January; for the North Platte division, at North Platte on the second Monday in June; for the Lincoln division, at Lincoln on the second Monday in May and the first Monday in October; for the Hastings division, at Hastings on the second Monday in March; and for the McCook division, at McCook on the first Monday

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in March: *Provided*, That where provision is made herein for holding court at places where there are no Federal buildings, a suitable room in which to hold court, together with light and heat, shall be provided by the city or county where such court is held, without any

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expense to the United States. The clerk of the court shall appoint a deputy for each division of the district in which he does not himself reside, who shall keep his office and reside at the place of holding court in the division for which he is appointed. (*36 Stat. L., 1118.*)

This section is a concise statement of what was the existing law.

Nevada.

R. S., ss. 531, 572.

SEC. 94. The State of Nevada shall constitute one judicial district, to be known as the district of Nevada. Terms of the district court shall be held at Carson City on the first Mondays in February, May, and October. (*36 Stat. L., 1118.*)

This section states in concise terms what was the existing law.

New Hampshire.

R. S., ss. 531, 572.
23 Feb., 1881, 21 Stat. L., 330, c. 71; 1 Supp., 317.
10 Mar., 1892, 27 Stat. L., 7, c. 15; 2 Supp., 4.
23 Aug., 1912, 37 Stat. L., 357, c. 344.

SEC. 95. The State of New Hampshire shall constitute one judicial district, to be known as the district of New Hampshire. Terms of the district court shall be held at Portsmouth on the last Tuesday in October, at Concord on the last Tuesday in April and the second Tuesday in December, and at Littleton on the third Tuesday in September. (*36 Stat. L., 1119.*)

This section is a concise statement of what was the existing law, amended as here given by the act of August 23, 1912.

New Jersey.

R. S., ss. 531, 572.
8 Aug., 1888, 25 Stat. L., 388, c. 790; 1 Supp., 607.
9 Aug., 1912, 37 Stat. L., 265, c. 277.
14 Feb., 1913, 37 Stat. L., —, c. —.

"SEC. 96. The State of New Jersey shall constitute one judicial district, to be known as the district of New Jersey. Terms of the district court shall be held at Newark on the first Tuesday in April and the first Tuesday in November, and at Trenton on the third Tuesday in January and the second Tuesday in September of each year. The clerk of the court for the district of New Jersey shall

maintain an office, in charge of himself or a deputy, at Newark and at Trenton, each of which offices shall be kept open at all times for the transaction of the business of the court; and the marshal shall also maintain an office, in charge of himself or a deputy, at Newark and at Trenton, each of which offices shall be kept open at all times for the transaction of the business of the court." (*36 Stat. L., 1119.*)

This section was amended as here given by the act of February 14, 1913. As originally enacted by this code it was a concise statement of the existing law.

New York.

R. S., ss. 541, 542, 572, 597.
23 Mar., 1882, 22 Stat. L., 32, c. 48; 1 Supp., 334.
12 May, 1900, 31 Stat. L., 175, c. 391; 2 Supp., 1167.

SEC. 97. The State of New York is divided into four judicial districts, to be known as the northern, eastern, southern, and western districts of New York. The *northern district* shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Albany, Broome, Cayuga, Chenango, Clinton, Cortland, Delaware, Essex, Franklin, Fulton, Hamilton, Herkimer, Jefferson, Lewis, Madison, Montgomery, Oneida, Onondaga, Oswego, Otsego, Rensselaer, Saint Lawrence, Saratoga, Schenectady, Schoharie, Tioga, Tompkins, Warren, and Washington, with the waters thereof. Terms of the district court for said district shall be held at Albany on the second Tuesday in February; at Utica on the first Tuesday in December; at Binghamton on the second Tuesday in June; at Auburn on the first Tuesday in October; at Syracuse on the first Tuesday in April; and, in the discretion of the judge of the court, one term annually at such time and place within the counties of Saratoga, Onondaga, Saint Lawrence, Clinton, Jefferson, Oswego, and Franklin, as he may from time to time appoint. Such appointment shall be made by notice of at least twenty days published in a newspaper published at the place where said court is to be held. The *eastern district* shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Richmond, Kings, Queens, Nassau, and Suffolk, with the waters thereof. Terms of the district court for said district shall be held at Brooklyn on the first Wednesday in every month. The *southern district* shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Columbia, Dutchess, Greene, New York, Orange, Putnam, Rockland, Sullivan, Ulster, and Westchester with the waters thereof. Terms of the district court for said district shall be held at New York City on the first Tuesday in each month. The district courts of the southern and eastern districts shall have concurrent jurisdiction over the waters within the counties of New York, Kings, Queens, Nassau, Richmond, and Suffolk, and over all seizures made and all matters done in such waters; all processes or orders issued within either of said courts or by any judge thereof shall run and be executed in any part of said waters. The *western district* shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Allegany, Cattaraugus, Chautauqua, Chemung, Erie, Genesee, Livingston, Monroe, Niagara, Ontario, Orleans, Schuyler, Seneca, Steuben, Wayne, Wyoming, and Yates, with the waters thereof. Terms of the district court for said district shall be held at Elmira on the second Tuesday in January; at Buffalo on the second Tuesdays in March and November; at Rochester on the second Tuesday in May; at Jamestown on the second Tuesday in July; at Lockport on the second Tuesday in October; and at Canandaigua on the second Tuesday in September. The regular sessions of the district court for the western district for the hearing of motions and for proceedings in bankruptcy and the trial of causes in admiralty, shall be held at Buffalo at least two weeks in each month of the year, except August, unless the business is sooner disposed of. The times for holding the same and such other special sessions as the court shall deem necessary shall be fixed by rules of the court. All process in admiralty causes and proceedings shall be

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made returnable at Buffalo. The judge of any district in the State of New York may perform the duties of the judge of any other district in such State upon the request of any resident judge entered in the minutes of his court; and in such cases such judge shall have the same powers as are vested in the resident judge. (*36 Stat. L., 1119.*)

Sections 597 and 599, Revised Statutes, are consolidated and so extended as to apply equally to the eastern and western districts, the object being that the judges of the four districts of New York, in view of local conditions, may interchange duties without an order from the circuit judge.

The navigable waters lying within Richmond County are also placed under the concurrent jurisdiction of the southern and eastern districts, that county comprising Staten Island.

As to the jurisdiction of the southern distict covered by the provision "the waters thereof," see The Norma, 32 Fed., 411; The Schooner L. W. Eaton, 9 Ben., 289; Beekman *v.* Hudson River W. Shore, R. Co., 35 Fed., 3.

Concurrent jurisdiction over waters, see Euberweg *v.* La Compagnie Generale Transatlantique, 35 Fed., 428; Gedney *v.* L'Amistad, 10 Fed. Cas., No. 5294a.

On the act of May 12, 1900, creating the western district, see Hartford Fire Ins. Co. *v.* Erie R. Co., 172 Fed., 899.

North Carolina.

R. S., ss. 543, 572, 621, 816.
19 June, 1878, 20 Stat. L., 173, c. 322; 1 Supp., 196.
17 Feb., 1887, 24 Stat. L., 406, c. 137; 1 Supp., 538.
9 Aug., 1894, 28 Stat. L., 274, c. 244; 2 Supp., 234.
15 Apr., 1902, 32 Stat. L., 106, c. 508.
23 Feb., 1903, 32 Stat. L., 852, c. 749.
22 Apr., 1904, 33 Stat. L., 250, c. 1422.
3 Mar., 1905, 33 Stat. L., 1004, c. 1436.
3 Mar., 1905, 33 Stat. L., 1004, c. 1437.
2 Mar., 1907, 34 Stat. L., 1224, c. 2528.
31 Jan., 1908, 35 Stat. L., 3, c. 6.
26 Jan., 1910, 36 Stat. L., 186, c. 4.

SEC. 98. The State of North Carolina is divided into two districts, to be known as the eastern and western districts of North Carolina. The *eastern district* shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Beaufort, Bertie, Bladen, Brunswick, Camden, Chatham, Cumberland, Currituck, Craven, Columbus, Chowan, Carteret, Dare, Duplin, Durham, Edgecombe, Franklin, Gates, Granville, Greene, Halifax, Harnett, Hertford, Hyde, Johnston, Jones, Lenoir, Lee, Martin, Moore, Nash, New Hanover, Northampton, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Person, Pitt, Robeson, Richmond, Sampson, Scotland, Tyrrell, Vance, Wake, Warren, Washington, Wayne, and Wilson. *Terms* of the district court for the eastern district shall be held at Elizabeth City on the second Mondays in April and October; at Washington on the third Mondays in April and October; at Newbern on the fourth Mondays in April and October; at Wilmington on the second Monday after the fourth Mondays in April and October; and at Raleigh on the fourth Monday after the fourth Mondays in April and October: *Provided*, That the city of Washington shall provide and furnish at its own expense a suitable and convenient place for holding the district court at Washington until a courthouse shall be constructed by the United States. The clerk of the court for the eastern district shall maintain an office in charge of himself or a deputy at Raleigh, at Wilmington, at Newbern, at Elizabeth City, and at Washington, which shall be kept open at all times for the transaction of the business of the court. The *western district* shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Alamance, Alexander, Ashe, Alleghany, Anson, Buncombe, Burke, Caswell, Cabarrus, Catawba, Cleveland, Caldwell, Clay, Cherokee, Davidson, Davie, Forsyth, Guilford, Gaston, Graham, Henderson, Haywood, Iredell, Jackson, Lincoln, Montgomery, Mecklenburg, Mitchell, McDowell, Madison, Macon, Orange, Polk, Randolph, Rockingham, Rowan, Rutherford, Stanly, Stokes, Surry, Swain, Transylvania, Union, Wilkes, Watauga, Yadkin, and Yancey. Terms of the district court for the western district shall be held at Greensboro on the first Mondays in June and December; at Statesville on the third Mondays in April and October; at Salisbury on the fourth Mondays in April and October; at Asheville on the first Mondays in May and November; at Charlotte on the first Mondays in April and October; and at Wilkesboro on the fourth Mondays in May and November. The clerk of the court for the western district shall maintain an office in charge of himself or a deputy at Greensboro, at Asheville, at Statesville, and

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at Wilkesboro, which shall be kept open at all times for the transaction of the business of the court. (*36 Stat. L., 1120.*)

As stated in the general notes on this chapter, the number of clerks of the court for each of the districts of North Carolina has been reduced from five to four, respectively, to one in each district. In lieu of the clerks so abolished, deputy clerks are provided for.

North Dakota.

SEC. 99. The State of North Dakota shall constitute one judicial district, to be known as the district of North Dakota. The territory embraced on the first day of July, nineteen hundred and ten, in the counties of Burleigh, Stutsman, Logan, McIntosh, Emmons, Kidder, Foster, Wells, McLean, Sheridan, Adams, Bowman, Dunn, Hettinger, Morton, Stark, and McKenzie shall constitute the southwestern division of said district; and the territory embraced on the date last mentioned in the counties of Cass, Richland, Barnes, Dickey, Sargent, Lamoure, Ransom, Griggs, and Steele, shall constitute the southeastern division; and the territory embraced on the date last mentioned in the counties of Grand Forks, Traill, Walsh, Pembina, Cavalier, and Nelson, shall constitute the northeastern division; and the territory embraced on the date last mentioned in the counties of Ramsey, Eddy, Benson, Towner, Rolette, Bottineau, Pierce, and McHenry, shall constitute the northwestern division; and the territory embraced on the date last mentioned in the counties of Ward, Williams, Montraille, Burk, and Renville shall constitute the western division. The several Indian reservations and parts thereof within said State shall constitute a part of the several divisions within which they are respectively situated. Terms of the district court for the southwestern division shall be held at Bismarck on the first Tuesday in March; for the southeastern division, at Fargo on the third Tuesday in May; for the northeastern division, at Grand Forks on the second Tuesday in November; for the northwestern division, at Devils Lake on the first Tuesday in July; and for the western division, at Minot on the second Tuesday in October. The clerk of the court shall maintain an office in charge of himself or a deputy at each place at which court is now held in his district. (*36 Stat. L., 1121.*)

22 Feb., 1889, 25 Stat. L., 682, c. 180, s. 21; 1 Supp., 649.
26 Apr., 1890, 26 Stat. L., 67, c. 161; 1 Supp., 716.
4 Feb., 1895, 28 Stat. L., 642, c. 55; 2 Supp., 368.
29 June, 1906, 34 Stat. L., 609, c. 3595.
5 Feb., 1912, 37 Stat. L., 28, c. 60.

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As originally enacted by this code, this section stated concisely what was the existing law. By the act of February 5, 1912, the section was amended by enumerating the counties embraced in the southwestern and western divisions, respectively.

Ohio.

SEC. 100. The State of Ohio is divided into two judicial districts, to be known as the northern and southern districts of Ohio. The *northern district* shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Ashland, Ashtabula, Cuyahoga, Carroll, Columbiana, Crawford, Geauga, Holmes, Lake, Lorain, Medina, Mahoning, Portage, Richland, Summit, Stark, Tuscarawas, Trumbull, and Wayne, which shall constitute the eastern division; also the territory embraced on the date last mentioned in the counties of Auglaize, Allen, Defiance, Erie, Fulton, Henry, Hancock, Hardin, Huron, Lucas, Mercer, Marion, Ottawa, Paulding, Putnam, Seneca, Sandusky, Van Wert, Williams, Wood, and Wyandotte, which shall constitute the western division of said district. Terms of the district court for the eastern division shall be held at Cleveland on the first Tuesdays in February, April, and October, and at Youngstown on the first Tuesday after the first Monday in March; and for the western division, at Toledo on the last Tuesdays in April and October. Grand and petit jurors summoned for service at a term of court to be held at Cleveland may, if in the opinion of the court the public convenience so requires, be directed to serve also at the term then being held or authorized to be held at Youngstown. Crimes and offenses committed in the eastern division shall be cognizable at the terms held at Cleveland, or at Youngstown, as the

R. S., ss. 544, 554, 572, 579.
8 June, 1878, 20 Stat. L., 101, c. 169; 1 Supp., 172.
4 Feb., 1880, 21 Stat. L., 63, c. 18; 1 Supp., 277.
27 July, 1882, 22 Stat. L., 176, c. 351; 1 Supp., 361.
2 Mar., 1891, 26 Stat. L., 799, c. 493; 1 Supp., 900.
4 Mar., 1907, 34 Stat. L., 1294, c. 2917.
26 Feb., 1909, 35 Stat. L., 656, c. 216.

Jurors.

court may direct. Any suit brought in the eastern division may, in the discretion of the court, be tried at the term held at Youngstown. The *southern district* shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Adams, Brown, Butler, Champaign, Clark, Clermont, Clinton, Darke, Greene, Hamilton, Highland, Lawrence, Miami, Montgomery, Preble, Scioto, Shelby, and Warren, which shall constitute the western division; also the territory embraced on the date last mentioned in the counties of Athens, Belmont, Coshocton, Delaware, Fairfield, Fayette, Franklin, Gallia, Guernsey, Harrison, Hocking, Jackson, Jefferson, Knox, Licking, Logan, Madison, Meigs, Monroe, Morgan, Morrow, Muskingum, Noble, Perry, Pickaway, Pike, Ross, Union, Vinton, and Washington, which shall constitute the eastern division of said district. Terms of the district court for the western division shall be held at Cincinnati on the first Tuesdays in February, April, and October; and for the eastern division, at Columbus on the first Tuesdays in June and December: *Provided*, That terms of the district court for the southern district shall be held at Dayton on the first Mondays in May and November. Prosecutions for crimes and offenses committed in any part of said district shall also be cognizable at the terms held at Dayton. All suits which may be brought within the southern district, or either division thereof, may be instituted, tried, and determined at the terms held at Dayton. (*36 Stat. L., 1121.*)

Southern district. Divisions.

Terms.

Terms at Dayton.

This section is a concise statement of what was the existing law.
See U. S. *v.* Eddy, 28 Fed. Rep., 226; Page *v.* Chillicothe, 6 Fed. Rep., 599.

Oklahoma.

SEC. 101. The State of Oklahoma is divided into two judicial districts, to be known as the eastern and the western districts of Oklahoma. The *eastern district* shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Adair, Atoka, Bryan, Craig, Cherokee, Creek, Choctaw, Coal, Carter, Delaware, Garvin, Grady, Haskell, Hughes, Johnson, Jefferson, Latimer, Le Flore, Love, McClain, Mayes, Muskogee, McIntosh, McCurtain, Murray, Marshall, Nowata, Ottawa, Okmulgee, Ofuskee, Pittsburg, Pushmataha, Pontotoc, Rogers, Stephens, Sequoyah, Seminole, Tulsa, Washington, and Wagoner. Terms of the district court for the eastern district shall be held at Muskogee on the first Monday in January; at Vinita on the first Monday in March; at Tulsa on the first Monday in April; at South McAlester on the first Monday in June; at Ardmore on the first Monday in October; and at Chickasha on the first Monday in November in each year. The *western district* shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Alfalfa, Beaver, Beckham, Blaine, Caddo, Canadian, Cimarron, Cleveland, Comanche, Custer, Dewey, Ellis, Garfield, Grant, Greer, Harmon, Harper, Jackson, Kay, Kingfisher, Kiowa, Lincoln, Logan, Majors, Noble, Oklahoma, Osage, Pawnee, Payne, Pottawatomie, Roger Mills, Texas, Tillman, Washita, Woods, and Woodward. Terms of the district court for the western district shall be held at Guthrie on the first Monday in January; at Oklahoma City on the first Monday in March; at Enid on the first Monday in June; at Lawton on the first Monday in September, and at Woodward on the first Monday in May and the second Monday in November: *Provided*, That suitable rooms and accommodations for holding court at Woodward are furnished free of expense to the United States. The clerk of the district court for the eastern district shall keep his office at Muskogee, and the clerk for the western district at Guthrie, and shall maintain an office in charge of himself or a deputy at Oklahoma City. (*36 Stat. L., 1122.*)

16 June, 1906, 34 Stat. L., 275, c. 3335, s. 13.
25 June, 1910, 36 Stat. L., 825, c. 394.
Eastern district.

Terms.

Western district.

Terms.

Rooms at Woodward.

Offices.

In dividing the State of Oklahoma into counties, the constitutional convention did not pay any attention to the line dividing Oklahoma and Indian Territories,

the result being that three counties, Grady, Stephens and Jefferson, were formed from territory lying within both of those Territories. Since, however, but a small portion of each county was taken from territory in the former Territory of Oklahoma, following the suggestion of the district attorney, they are placed in the eastern, or Indian Territory division, in this section; otherwise the section states what was existing law.

Oregon.

R. S., ss. 531, 572.
2 Mar., 1909, 35 Stat. L., 686, c. 243, ss. 4, 5, 6.

SEC. 102. The State of Oregon shall constitute one judicial district, to be known as the district of Oregon. Terms of the district court shall be held at Portland on the first Mondays in March, July, and November; at Pendleton on the first Tuesday in April; and at Medford on the first Tuesday in October. The marshal and the clerk for said district shall each appoint, in the manner provided by law, at least one deputy at Pendleton and one at Medford, who shall reside and maintain an office at each of said places. (*36 Stat. L., 1122.*)

Offices.

This section states concisely what was the existing law, the provision respecting the division of business between the two judges being found in section 23, which is made general in its application.

Pennsylvania.

R. S., ss. 545, 572, 579.
5 Aug., 1886, 24 Stat. L., 336, c. 931; 1 Supp., 515.
2 Mar., 1901, 31 Stat. L., 880, c. 801; 2 Supp., 1501.
30 June, 1902, 32 Stat. L., 549, c. 1335.
30 June, 1902, 32 Stat. L., 549, c. 1336.
3 Mar., 1913, 37 Stat. L., ——, c.

SEC. 103. That the State of Pennsylvania is divided into three judicial districts, to be known as the eastern, middle, and western districts of Pennsylvania. The *eastern district* shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Berks, Bucks, Chester, Delaware, Lancaster, Lehigh, Montgomery, Northampton, Philadelphia, and Schuylkill. Terms of the district court shall be held at Philadelphia on the second Mondays in March and June, the third Monday in September, and the second Monday in December, each term to continue until the succeeding term begins. The *middle district* shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Adams, Bradford, Cameron, Carbon, Center, Clinton, Columbia, Cumberland, Dauphin, Franklin, Fulton, Huntingdon, Juniata, Lackawanna, Lebanon, Luzerne, Lycoming, Mifflin, Monroe, Montour, Northumberland, Perry, Pike, Potter, Snyder, Sullivan, Susquehanna, Tioga, Union, Wayne, Wyoming, and York. Terms of the district court shall be held at Scranton on the second Monday in March and the third Monday in October, at Harrisburg on the first Mondays in May and December, at Sunbury on the second Monday in January, and at Williamsport on the first Monday in June. The clerk of the court for the middle district shall maintain an office, in charge of himself or a deputy, at Harrisburg, and civil suits instituted at that place shall be tried there, if either party resides nearest that place of holding court, unless by consent of parties they are removed to another place for trial. The *western district* shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Allegheny, Armstrong, Beaver, Bedford, Blair, Butler, Cambria, Clarion, Clearfield, Crawford, Elk, Erie, Fayette, Forest, Greene, Indiana, Jefferson, Lawrence, McKean, Mercer, Somerset, Venango, Warren, Washington, and Westmoreland. Terms of the district court shall be held at Pittsburgh on the first Monday in May and the third Monday in October, and at Erie on the third Monday in July and the second Monday in January. (*36 Stat. L., 1123.*)

Middle district.

Terms.

Offices at Harrisburg.

Western district.

Terms.

This section states concisely what was the existing law. The special provision respecting the number of jurors to be summoned is omitted as unnecessary, the provision respecting liens being provided for in section 60, which is made general in its application (p. 39).

The section was amended as here given by the act of March 3, 1913, which provided for a term of court at Sunbury.

Rhode Island.

R. S., ss. 531, 572.
1 Feb., 1912, 37 Stat. L., 59, c. 27.

SEC. 104. The State of Rhode Island shall constitute one judicial district, to be known as the district of Rhode Island. Terms of the

district court shall be held at Providence on the fourth Tuesday in May and the third Tuesday in November. (*36 Stat. L., 1123.*)

The act of February 1, 1912, amended this section as it now appears, by abolishing the terms of court at Newport. Otherwise the section states concisely what was the existing law.

South Carolina.

R. S., ss. 546, 552, 776, 817.
26 Apr., 1890, 26 Stat. L., 71, c. 165; 1 Supp., 718.
23 July, 1892, 27 Stat. L., 261, c. 235; 2 Supp., 46.
21 Dec., 1898, 30 Stat. L., 769, c. 32; 2 Supp., 912.
10 May, 1900, 31 Stat. L., 174, c. 390; 2 Supp., 1167.
27 Feb., 1907, 34 Stat. L., 1002, c. 2079.
5 Feb., 1912, 37 Stat. L., 60, c. 28.

SEC. 105. The State of South Carolina is divided into two districts, to be known as the eastern and western districts of South Carolina. The *western district* shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Abbeville, Anderson, Cherokee, Chester, Edgefield, Fairfield, Greenville, Greenwood, Lancaster, Laurens, Newberry, Oconee, Pickens, Saluda, Spartanburg, Union, and York. Terms of the district court for the western district shall be held at Greenville on the third Tuesdays in April and October. The *eastern district* shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Aiken, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Chesterfield, Clarendon, Colleton, Darlington, Dillon, Dorchester, Florence, Georgetown, Hampton, Horry, Kershaw, Lee, Lexington, Marion, Marlboro, Orangeburg, Richland, Sumter, and Williamsburg.

Terms.

Terms of the district court for the eastern district shall be held at Charleston on the first Tuesdays in June and December; at Columbia on the third Tuesday in January and the first Tuesday in November, the latter term to be solely for the trial of civil cases; and at Florence on the first Tuesday in March.

Offices.

The offices of the clerk of the district court shall be at Greenville, and at Charleston; and the clerk shall reside in one of said cities and have a deputy in the other. (*36 Stat. L., 1123.*)

This section was amended as here given by the act of February 5, 1912, which provided for the inclusion of Dillon County in the eastern district.

Section 546, Revised Statutes, provided that certain counties (naming them), as they existed on February 21, 1823, shall constitute the western district of South Carolina, the remaining counties in the State the eastern district.

By the act of March 10, 1871 (14 Stat. S. C., 695). Aiken County was created from territory taken from Edgefield, Barnwell, Lexington, and Orangeburg Counties. Of these counties, the first lies in the western district, the other three in the eastern district; hence Aiken County now lies partly within each district, the larger portion being in the eastern district. In view of this fact and also of the further fact that Columbia, the place of holding court in the eastern district, is much more accessible. Aiken County has been put in the eastern district in this section.

See Barrett *v.* U. S., 169 U. S., 218, which held (in 1894) that the word "district" was intended to mean "divisions." As to the boundary of the district on the Atlantic Ocean, see The Hungaria, 41 Fed., 109.

South Dakota.

22 Feb., 1889, 25 Stat. L., 682, c. 180, s. 21; 1 Supp., 649.
27 Feb., 1890, 26 Stat. L., 14, c. 21; 1 Supp., 705.
3 Nov., 1893, 28 Stat. L., 5, c. 10; 2 Supp., 151.
9 May, 1902, 32 Stat. L., 197, c. 785.

SEC. 106. The State of South Dakota shall constitute one judicial district, to be known as the district of South Dakota. The territory embraced on the first day of July, nineteen hundred and ten, in the counties of Aurora, Beadle, Bon Homme, Brookings, Brule, Charles Mix, Clay, Davison, Douglas, Gregory, Hanson, Hutchinson, Kingsbury, Lake, Lincoln, McCook, Miner, Minnehaha, Moody, Sanborn, Turner, Union, and Yankton, and in the Yankton Indian reservation, shall constitute the southern division of said district; the territory embraced on the date last mentioned in the counties of Brown, Campbell, Clark, Codington, Corson, Day, Deuel, Edmunds, Grant, Hamlin, McPherson, Marshall, Roberts, Schnasse, Spink, and Walworth, and in the Sisseton and Wahpeton Indian reservation, and in that portion of the Standing Rock Indian reservation lying in South Dakota, shall constitute the northern division; the territory embraced on the date last mentioned in the counties of Armstrong, Buffalo, Dewey, Faulk, Hand, Hughes, Hyde, Jerauld, Lyman, Potter, Stanley, and Sulley, and in the Cheyenne River, Lower Brule, and Crow Creek Indian reservations, shall constitute the central division; and the territory embraced on the date last mentioned in the counties of

Divisions.

Bennett, Butte, Custer, Fall River, Harding, Lawrence, Meade, Mellette, Pennington, Perkins, Shannon, Todd, Tripp, Washabaugh, and Washington, and in the Rosebud and Pine Ridge Indian reservations, shall constitute the western division. Terms of the district court for the southern division shall be held at Sioux Falls on the first Tuesday in April and the third Tuesday in October; for the northern division, at Aberdeen on the first Tuesday in May and the second Tuesday in November; for the central division, at Pierre on the second Tuesday in June and the first Tuesday in October; and for the western division, at Deadwood on the third Tuesday in May and the first Tuesday in September. The clerk of the district court shall maintain an office in charge of himself or a deputy at Sioux Falls, at Pierre, at Aberdeen, and at Deadwood, which shall be kept open for the transaction of business of the court. (*36 Stat. L., 1123.*)

Terms.

Offices.

This section states concisely what was the existing law.

SEC. 107. The State of Tennessee is divided into three districts, to be known as the eastern, middle, and western districts of Tennessee. The *eastern district* shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Bledsoe, Bradley, Hamilton, James, McMinn, Marion, Meigs, Polk, Rhea, and Sequatchie, which shall constitute the southern division of said district; also the territory embraced on the date last mentioned in the counties of Anderson, Blount, Campbell, Claiborne, Grainger, Jefferson, Knox, Loudon, Monroe, Morgan, Roane, Sevier, Scott, and Union, which shall constitute the northern division of said district; also the territory embraced on the date last mentioned in the counties of Carter, Cocke, Greene, Hamblen, Hancock, Hawkins, Johnson, Sullivan, Unicoi, and Washington, which shall constitute the northeastern division of said district. *Terms* of the district court for the southern division of said district shall be held at Chattanooga on the fourth Monday in April and the second Monday in November; for the northern division, at Knoxville on the fourth Monday in May and the first Monday in December; and for the northeastern division, at Greeneville on the first Monday in March and the third Monday in September. The *middle district* shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Bedford, Cannon, Cheatham, Coffee, Davidson, Dickson, Franklin, Giles, Grundy, Hickman, Humphreys, Houston, Lawrence, Lewis, Lincoln, Marshall, Maury, Montgomery, Moore, Robertson, Rutherford, Stewart, Sumner, Trousdale, Warren, Wayne, Williamson, and Wilson, which shall constitute the Nashville division of said district; also the territory embraced on the date last mentioned in the counties of Clay, Cumberland, Dekalb, Fentress, Jackson, Macon, Overton, Pickett, Putnam, Smith, Van Buren, and White, which shall constitute the northeastern division of said district. *Terms* of the district court for the Nashville division of said district shall be held at Nashville on the second Monday in March and the fourth Monday in September; and for the northeastern division, at Cookeville on the third Monday in April and the first Monday in November: *Provided*, That suitable accommodations for holding court at Cookeville shall be provided by the county or municipal authorities without expense to the United States. The *western district* shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Dyer, Fayette, Haywood, Lauderdale, Shelby, and Tipton, which shall constitute the western division of said district; also the territory embraced on the date last mentioned in the counties of Benton, Carroll, Chester, Crockett, Decatur, Gibson, Hardeman, Hardin, Henderson, Henry, Lake, McNairy, Madison, Obion, Perry, and Weakley, including the waters of the Tennessee River to low-water mark on the eastern shore thereof wherever such river forms

Tennessee.

R. S., ss. 547, 552, 572, 586.
3 Mar., 1875, 18 Stat. L., 480, c. 148; 1 Supp., 90.
14 June, 1878, 20 Stat. L., 132, c. 196; 1 Supp., 181.
20 June, 1878, 20 Stat. L., 235, c. 359; 1 Supp., 202.
11 June, 1880, 21 Stat. L., 175, c. 203; 1 Supp., 295.
15 Jan., 1883, 22 Stat. L., 402, c. 25; 1 Supp., 392.
27 Dec., 1884, 23 Stat. L., 280, c. 7; 1 Supp., 471.
27 Feb., 1896, 29 Stat. L., 39, c. 35; 2 Supp., 449.
2 Feb., 1899, 30 Stat. L., 814, c. 83; 2 Supp., 939.
7 Feb., 1900, 31 Stat. L., 5, c. 10; 2 Supp., 1114.
24 May, 1900, 31 Stat. L., 183, c. 549; 2 Supp., 1173.
19 Jan., 1901, 31 Stat. L., 735, c. 102; 2 Supp., 1460.
28 Apr., 1904, 33 Stat. L., 545, c. 1797.
18 June, 1906, 34 Stat. L., 298, c. 3341.
8 Feb., 1907, 34 Stat. L., 882, c. 895.
1 Feb., 1909, 35 Stat. L., 591, c. 54.
13 Feb., 1909, 35 Stat. L., 618, c. 112.
20 Aug., 1912, 37 Stat. L., 314, c. 396.

Rooms at Cookeville.

Tennessee River.

the boundary line between the western and middle districts of Tennessee, from the north line of the State of Alabama north to the point in Henry County, Tennessee, where the south boundary line of the State of Kentucky strikes the east bank of the river, which shall constitute the eastern division of said district. Terms of the district court for the western division of said district shall be held at Memphis on the fourth Mondays in May and November; and for the eastern division, at Jackson on the fourth Mondays in April and October. The clerk of the court for the western district shall appoint a deputy, who shall reside at Jackson. The marshal for the western district shall appoint a deputy, who shall reside at Jackson. The marshal for the eastern district shall appoint a deputy, who shall reside at Chattanooga. The clerk of the court for the eastern district shall maintain an office in charge of himself or a deputy at Knoxville, at Chattanooga, and at Greeneville, which shall be kept open at all times for the transaction of the business of the court. (*36 Stat. L., 1124.*)

Terms.

Offices.

The section was amended to read as here given by the act of August 20, 1912. The provision that the terms of court fixed for Greeneville shall be held in a building free of expense to the Government is omitted as obsolete, as the court is now held in a Federal building in that city.

The Tennessee River, for the greater portion of the distance it traverses the State of Tennessee, forms the dividing line between the western and middle judicial districts of that State. The legislature of that State, in defining the boundaries of some of the counties abutting on that river, fixed the line at low-water mark; consequently, unless the river is specifically included in a district, certain portions above low-water mark would not be in any district. As considerable commerce is carried upon that river, it is quite important that the dividing line between the two judicial districts should be clearly defined. To make the middle of the stream the dividing line would make it almost impossible to prove in which district a crime committed upon its waters was committed. For this reason the western district is given jurisdiction over the waters of the river to low-water mark on the eastern shore thereof.

Texas.

SEC. 108. The State of Texas is divided into four districts, to be known as the northern, eastern, western, and southern districts of Texas. The *northern district* shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Dallas, Ellis, Hunt, Johnson, Kaufman, Navarro, and Rockwall, which shall constitute the Dallas division; also the territory embraced on the date last mentioned in the counties of Archer, Baylor, Clay, Comanche, Erath, Foard, Hardeman, Hood, Jack, Palo Pinto, Parker, Tarrant, Wichita, Wilbarger, Wise, and Young, which shall constitute the Fort Worth division; also the territory embraced on the date last mentioned in the counties of Armstrong, Bailey, Briscoe, Carson, Castro, Childress, Cochran, Collingsworth, Cottle, Crosby, Dallam, Deaf Smith, Dickens, Donley, Floyd, Gray, Hale, Hall, Hansford, Hartley, Hemphill, Hockley, Hutchinson, King, Lamb, Lipscomb, Lubbock, Moore, Motley, Ochiltree, Oldham, Parmer, Potter, Randall, Roberts, Sherman, Swisher, and Wheeler, which shall constitute the Amarillo division; also the territory embraced on the date last mentioned in the counties of (Andrews,) Borden, Callahan, Dawson, Eastland, Fisher, (Gaines,) Garza, Haskell, Howard, Jones, Kent, Knox, Lynn, (Martin, Midland,) Mitchell, Nolan, Scurry, Shackelford, Stephens, Stonewall, Taylor, Terry, Throckmorton, and Yoakum, which shall constitute the Abilene division; also the territory embraced on the date last mentioned in the counties of Brown, Coke, Coleman, Concho, Crockett, Glasscock, Irion, Menard, Mills, Runnels, Schleicher, Sterling, Sutton, Tom Green, and (Upton,) which shall constitute the San Angelo division of the said district. *Terms* of the district court for the Dallas division shall be held at Dallas on the second Monday in January and the first Monday in May; for the Fort Worth division, at Fort Worth on the first Monday in November and the second Monday in March;

R. S., ss. 548, 572.
24 Feb., 1879, 20 Stat. L., 318, c. 97; 1 Supp., 217.
11 June, 1879, 21 Stat. L., 10, c. 18; 1 Supp., 265.
14 June, 1880, 21 Stat. L., 198, c. 213; 1 Supp., 297.
3 June, 1884, 23 Stat. L., 35, c. 64; 1 Supp., 438.
20 June, 1884, 23 Stat. L., 48, c. 102; 1 Supp., 439.
1 Mar., 1889, 25 Stat. L., 786, c. 333, ss. 17, 18, 19; 1 Supp., 674.
4 Feb., 1890, 26 Stat. L., 3, c. 5; 1 Supp., 703.
7 Apr., 1892, 27 Stat. L., 15, c. 39; 2 Supp., 8.
11 June, 1896, 29 Stat. L., 456, c. 422; 2 Supp., 527.
8 Feb., 1897, 29 Stat. L., 516, c. 178; 2 Supp., 547.
See act of Feb. 5, 1913, below.
2 Feb., 1899, 30 Stat. L., 812, c. 81; 2 Supp., 938.
2 Mar., 1899, 30 Stat. L., 1002, c. 393; 2 Supp., 969.
10 Feb., 1900, 31 Stat. L., 27, c. 16; 2 Supp., 1116.
12 Apr., 1900, 31 Stat. L., 74, c. 186; 2 Supp., 1127.

for the Amarillo division, at Amarillo on the third Monday in April and the fourth Monday in September; for the Abilene division, at Abilene on the first Monday in October and the second Monday in April; and for the San Angelo division, at San Angelo on the third Monday in October and the fourth Monday in April. The clerk of the court for the northern district shall maintain an *office* in charge of himself or a deputy at Dallas, at Fort Worth, at Amarillo, at Abilene, and at San Angelo, which shall be kept open at all times for the transaction of the business of the court. The *eastern district* shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Anderson, Angelina, Cherokee, Gregg, Henderson, Houston, Nacogdoches, Panola, Rains, Rusk, Smith, Van Zandt, and Wood, which shall constitute the Tyler division; also the territory embraced on the date last mentioned in the counties of Hardin, Jasper, Jefferson, Liberty, Newton, Orange, Sabine, San Augustine, Shelby, and Tyler, which shall constitute the Beaumont division; also the territory embraced on the date last mentioned in the counties of Collin, Cook, Denton, Grayson, and Montague, which shall constitute the Sherman division; also the territory embraced on the date last mentioned in the counties of Camp, Cass, Harrison, Hopkins, Marion, Morris, and Upshur, which shall constitute the Jefferson division; also the territory embraced on the date last mentioned in the counties of Delta, Fannin, Red River, and Lamar, which shall constitute the Paris division; also the territory embraced on the date last mentioned in the counties of Bowie, Franklin, and Titus, which shall constitute the Texarkana division. *Terms* of the district court for the Tyler division shall be held at Tyler on the fourth Mondays in January and April; for the Jefferson division, at Jefferson on the first Monday in October and the third Monday in February; for the Beaumont division, at Beaumont on the third Monday in November and the first Monday in April; for the Sherman division, at Sherman on the first Monday in January and the third Monday in May; for the Paris division, at Paris on the third Monday in October and the first Monday in March; and for the Texarkana division, at Texarkana on the third Monday in March and the first Monday in November. The clerk of the court for the eastern district shall maintain an *office* in charge of himself or a deputy at Sherman, at Beaumont, and at Texarkana, which shall be kept open at all times for the transaction of the business of said court. The *western district* shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Bastrop, Blanco, Burleson, Burnet, Caldwell, Gillespie, Hays, Kimble, Lampasas, Lee, Llano, Mason, McCulloch, San Saba, Travis, Washington, and Williamson, which shall constitute the Austin division; also the territory embraced on the date last mentioned in the counties of Atascosa, Bandera, Bexar, Comal, Dimmit, Edwards, Frio, Gonzales, Guadalupe, Karnes, Kendall, Kerr, Medina, and Wilson, which shall constitute the San Antonio division; also the territory embraced on the date last mentioned in the counties of Brewster, (Crane, Ector,) El Paso, (Jeff Davis, Loving, Reeves,) Presidio, (Ward,) and (Winkler,) which shall constitute the El Paso division; also the territory embraced on the date last mentioned in the counties of Bell, Bosque, Coryell, Falls, Hamilton, Freestone, Hill, Leon, Limestone, McLennan, Milam, Robertson, and Somervell, which shall constitute the Waco division; also the territory embraced on the date last mentioned in the counties of Kinney, Maverick, Pecos, Terrell, Uvalde, Valverde, and Zavalla, which shall constitute the Del Rio division. *Terms* of the district court for the Austin division shall be held at Austin on the fourth Monday in January and the second Monday in June; for the Waco division, at Waco on the fourth Monday in Feb-

26 May, 1900, 31 Stat. L., 218, c. 590; 2 Supp., 1178.
19 Feb., 1901, 31 Stat. L., 798, c. 382; 2 Supp., 1486.
3 Mar., 1901, 31 Stat. L., 1458, c. 881; 2 Supp., 1815.
11 Mar., 1902, 32 Stat. L., 64, c. 183.
30 Jan., 1903, 32 Stat. L., 785, c. 337.
9 Feb., 1903, 32 Stat. L., 820, c. 532.
2 Mar., 1903, 32 Stat. L., 926, c. 974.
21 Jan., 1905, 33 Stat. L., 612, c. 52.
18 Apr., 1906, 34 Stat. L., 121, c. 1636.
9 June, 1906, 34 Stat. L., 226, c. 3063.
14 Feb., 1908, 35 Stat. L., 8, c. 24.
21 Feb., 1908, 35 Stat. L., 34, c. 33.
27 Mar., 1908, 35 Stat. L., 50, c. 108.
2 Mar., 1909, 35 Stat. L., 687, c. 245.
29 May, 1912, 37 Stat. L., 120, c. 144.
5 Feb., 1913, 37 Stat. L., —, c. —.

Terms.

Western district. Divisions.

See act of Feb. 5, 1913, below.

Terms.

ruary and the second Monday in November; for the San Antonio division, at San Antonio on the first Monday in May and the third Monday in December; for the El Paso division, at El Paso on the first Monday in April and the first Monday in October; and for the Del Rio division, at Del Rio on the third Monday in March and the fourth Monday in October. The clerk of the court for the western district shall maintain an *office* in charge of himself or a deputy at Austin, at El Paso, and at Del Rio, which shall be kept open at all times for the transaction of business. The *southern district* shall include the territory embraced on the first of July, nineteen hundred and ten, in the counties of (Duval,) La Salle, McMullen, (Nueces,) Webb, and Zapata, which shall constitute the Laredo division; also the territory embraced on the date last mentioned in the counties of Cameron, Hidalgo, and Starr, which shall constitute the Brownsville division; also the territory embraced on the date last mentioned in the counties of Austin, Brazoria, Chambers, Galveston, Fort Bend, Matagorda, and Wharton, which shall constitute the Galveston division; also the territory embraced, on the date last mentioned, in the counties of Brazos, Colorado, Fayette, Grimes, Harris, Lavaca, Madison, Montgomery, Polk, San Jacinto, Trinity, Walker, and Waller, which shall constitute the Houston division; also the territory embraced on the date last mentioned, in the counties of (Bee,) Calhoun, Dewitt, Goliad, Jackson, (Live Oak,) Refugio, (Aransas, San Patricio,) and Victoria, which shall constitute the Victoria division. *Terms* of the district court for the Galveston division shall be held at Galveston on the second Monday in January and the first Monday in June; for the Houston division, at Houston on the fourth Mondays in February and September; for the Laredo division, at Laredo on the third Monday in April and the second Monday in November; for the Brownsville division, at Brownsville on the second Monday in May and the first Monday in December; and for the Victoria division, at Victoria on the first Monday in May and the fourth Monday in November. The clerk of the court for the southern district shall maintain an *office* in charge of himself or a deputy at each of the places now designated for holding court in said district. (*36 Stat. L., 1125.*)

Southern district. New division created by act of May 29, 1912, below.

Terms. See act of May 29, 1912, below.

The acts creating the Victoria division of the southern district, the Del Rio division of the western district, and the Texarkana divison of the eastern district, authorized the district judges to fix the times of holding court in those divisions. The times as fixed by the court have been carried into this section.

In several of the acts creating new divisions, no name was given the divisions. For purposes of description or identification this is necessary. In view of this fact, names have been given to the divisions corresponding to the places at which the court is held therein.

On the construction of the act of February 24, 1879, creating the northern district, see U. S. *v.* Texas, 162 U. S., 1, 67.

Act of March 1, 1889, relating to the eastern district, see Cook *v.* U. S., 138 U. S., 157.

Terms of court at Corpus Christi were provided for and a new division of the southern district created by the act of May 29, 1912, which is as follows:

AN ACT To create a new division of the southern judicial district of Texas, and to provide for terms of court at Corpus Christi, Texas, and for a clerk for said court, and for other purposes.

[Public—No. 171.]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the counties of Bee, Live Oak, Aransas, San Patricio, Nueces, Jim Wells, Duval, Brooks, and Willacy shall constitute a division of the southern judicial district of Texas.

SEC. 2. That terms of the district court of the United States for the said southern district of Texas shall be held twice in each year at the city of Corpus Christi, in Nueces County, and that, until otherwise provided by law, the judge of said court shall fix the times at which

said court shall be held at Corpus Christi, of which he shall make publication and give due notice.

Terms of court at Pecos were provided for by the act of February 5, 1913, and a new division of the western district was created from certain counties formerly embraced in the northern district and in the El Paso division of the western district, which is as follows:

AN ACT To create a new division of the western judicial district of Texas, and to provide for terms of court at Pecos, Texas, and for other purposes.

[Public—No. 361.]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the counties of Reeves, Ward, Martin, Reagan, Winkler, Ector, Gaines, Andrews, Upton, Midland, Loving, Jeff Davis, and Crane shall constitute a division of the western judicial district of Texas.

SEC. 2. That terms of the district court of the United States for the said western district of Texas shall be held twice in each year at the city of Pecos, in Reeves County, and that, until otherwise provided by law, the judge of said court shall fix the times at which said court shall be held at Pecos, of which he shall make proclamation and give due notice: *Provided, however*, That suitable rooms and accommodations shall be furnished for the holding of said court and for the use of the officers of said court at Pecos, free of expense to the Government of the United States.

Utah.

16 July, 1894, 28 Stat. L., 110, c. 138, ss. 14, 15; 2 Supp., 200.
2 Mar., 1897, 29 Stat. L., 620, c. 366; 2 Supp., 576.
19 Feb., 1903, 32 Stat. L., 841, c. 706.

SEC. 109. The State of Utah shall constitute one judicial district, to be known as the district of Utah. It is divided into two divisions, to be known as the northern and central divisions. The northern division shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Boxelder, Cache, Davis, Morgan, Rich, and Weber. The central division shall include the territory embraced on the date last mentioned in the counties of Beaver, Carbon, Emery, Garfield, Grand, Iron, Juab, Kane, Millard, Piute, Salt Lake, San Juan, San Pete, Sevier, Summit, Tooele, Uinta, Utah, Wasatch, Washington, and Wayne. Terms of the district court for the northern division shall be held at Ogden on the second Mondays in March and September; and for the central division, at Salt Lake on the second Mondays in April and November. The clerk of the court for said district shall maintain an office in charge of himself or a deputy at each of the places where the court is now required to be held in the district. (*36 Stat. L., 1127.*)

Terms.

Offices.

This section states concisely what was the existing law.

Vermont.

R. S., ss. 531, 572, 807.
5 June, 1874, 18 Stat. L., 53, c. 214; 1 Supp., 10.
3 July, 1894, 28 Stat. L., 99, c. 123; 2 Supp., 193.
22 Apr., 1904, 33 Stat. L., 249, c. 1419.
1 Feb., 1912, 37 Stat. L., 58, c. 26.

SEC. 110. The State of Vermont shall constitute one judicial district, to be known as the district of Vermont. Terms of the district court shall be held at Burlington on the fourth Tuesday in February; at Windsor on the third Tuesday in May; at Rutland on the first Tuesday in October, and at Brattleboro on the third Tuesday in December. In each year one of the stated terms of the district court may, when adjourned, be adjourned to meet at Montpelier, and one at Newport: *Provided, however*, That suitable rooms and accommodations shall be furnished for the holding of said court and for the use of the officers of said court at Brattleboro, free of expense to the Government of the United States until the public building provided for by act of Congress shall be erected. (*36 Stat. L., 1127.*)

This section was amended as here given by the act of February 1, 1912, which provided for a term of court at Brattleboro, in a building free of expense to the Government. Otherwise the section states concisely what was the existing law.

Virginia.

R. S., ss. 549, 572, 622.
25 Sept., 1890, 26 Stat. L., 474, c. 922; 1 Supp., 806.

SEC. 111. The State of Virginia is divided into two districts, to be known as the eastern and western districts of Virginia. The *eastern district* shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Accomac,

3 Mar., 1899, 30 Stat. L., 1368, c. 452; 2 Supp., 1104. 18 Apr., 1900, 31 Stat. L., 136, c. 245; 2 Supp., 1140. 3 Feb., 1903, 32 Stat. L., 794, c. 398. 22 Apr., 1904, 33 Stat. L., 249, c. 1421. 28 June, 1906, 34 Stat. L., 546, c. 3576. 3 Apr., 1908, 35 Stat. L., 57, c. 131.

Alexandria, Amelia, Brunswick, Caroline, Charles City, Chesterfield, Culpeper, Dinwiddie, Elizabeth City, Essex, Fairfax, Fauquier, Gloucester, Goochland, Greensville, Hanover, Henrico, Isle of Wight, James City, King and Queen, King George, King William, Lancaster, Loudoun, Louisa, Lunenburg, Mathews, Mecklenburg, Middlesex, Nansemond, New Kent, Norfolk, Northampton, Northumberland, Nottoway, Orange, Powhatan, Prince Edward, Prince George, Prince William, Princess Anne, Richmond, Southampton, Spottsylvania, Stafford, Surry, Sussex, Warwick, Westmoreland, and York. Terms of the district court shall be held at Richmond on the first Mondays in April and October; at Norfolk on the first Mondays in May and November; and at Alexandria on the first Mondays in January and July. The *western district* shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Alleghany, Albemarle, Amherst, Appomattox, Augusta, Bath, Bedford, Bland, Botetourt, Buchanan, Buckingham, Campbell, Carroll, Charlotte, Clarke, Craig, Cumberland, Dickenson, Floyd, Fluvanna, Franklin, Frederick, Giles, Grayson, Greene, Halifax, Henry, Highland, Lee, Madison, Montgomery, Nelson, Page, Patrick, Pulaski, Pittsylvania, Rappahannock, Roanoke, Rockbridge, Rockingham, Russell, Scott, Shenandoah, Smyth, Tazewell, Warren, Washington, Wise, and Wythe. Terms of the district court shall be held at Lynchburg on the Tuesdays after the second Mondays in March and September; at Danville on the Tuesdays after the second Mondays in April and November; at Abingdon on the Tuesdays after the first Mondays in May and October; at Harrisonburg on the Tuesdays after the first Mondays in June and December; at Charlottesville on the second Monday in January and the first Monday in July; at Roanoke on the third Monday in February and the third Monday in June; and at Bigstone Gap on the fourth Monday in January and the second Monday in August. The clerk of the court for the western district shall maintain an office in charge of himself or a deputy at Lynchburg, at Danville, at Charlottesville, at Roanoke, at Abingdon, and at Big Stone Gap, which shall be kept open at all times for the transaction of the business of the court. (*36 Stat. L., 1127.*)

Terms.

Western district.

Terms.

Offices.

Following the policy stated in the general note on this chapter, the number of clerks in the western district has been reduced to one, and in lieu thereof deputy clerks are provided for. With this exception the section states concisely what was existing law.

Washington.

22 Feb., 1889, 25 Stat. L., 682, c. 180, ss. 21, 22, 23; 1 Supp., 649. 5 Apr., 1890, 26 Stat. L., 45, c. 65; 1 Supp., 711. 2 Mar., 1905, 33 Stat. L., 824, c. 1305. 20 Feb., 1907, 34 Stat. L., 913, c. 1139. 2 Mar., 1909, 35 Stat. L., 686, c. 243, s. 2.

SEC. 112. The State of Washington is divided into two districts, to be known as the eastern and western districts of Washington. The *eastern district* shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Spokane, Stevens, Ferry, Okanogan, Chelan, Grant, Douglas, Lincoln, and Adams, with the waters thereof, including all Indian reservations within said counties, which shall constitute the northern division; also the territory embraced on the date last mentioned in the counties of Asotin, Garfield, Whitman, Columbia, Franklin, Walla Walla, Benton, Klickitat, Kittitas, and Yakima, with the waters thereof, including all Indian reservations within said counties, which shall constitute the southern division of said district. Terms of the district court for the northern division, shall be held at Spokane on the first Tuesdays in April and September; for the southern division, at Walla Walla on the first Tuesdays in June and December, and at North Yakima on the first Tuesdays in May and October. The *western district* shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Whatcom, Skagit, Snohomish, King, San Juan, Island, Kitsap, Clallam, and Jefferson, with the waters, thereof, including all Indian reservations within said counties, which shall constitute the northern division; also the territory

Terms.

Western district.

Divisions.

embraced on the date last mentioned in the counties of Pierce, Mason, Thurston, Chehalis, Pacific, Lewis, Wahkiakum, Cowlitz, Clarke, and Skamania, with the waters thereof, including all Indian reservations within said counties, which shall constitute the southern division of said district. Terms of the district court for the northern division shall be held at Bellingham on the first Tuesdays in April and October; at Seattle on the first Tuesdays in May and November; and for the southern division, at Tacoma on the first Tuesdays in February and July. The clerks of the courts for the eastern and western districts shall maintain an office in charge of himself or a deputy at each place in their respective districts where terms of court are now required to be held. (*36 Stat. L., 1128.*)

Terms.

Offices.

This section states concisely what was existing law.

West Virginia.

R. S., ss. 531, 572.
22 July, 1892, 27 Stat. L., 254, c. 227; 2 Supp., 42.
22 Jan., 1901, 31 Stat. L., 736, c. 105; 2 Supp., 1460.
4 June, 1902, 32 Stat. L., 304, c. 989.
31 Jan., 1903, 32 Stat. L., 791, c. 346.
24 Feb., 1904, 33 Stat. L., 50, c. 163.
28 Apr., 1904, 33 Stat. L., 548, c. 1802.
11 Feb., 1907, 34 Stat. L., 890, c. 920.
2 Mar., 1911, 36 Stat. L., 1013, c. 197.
23 Mar., 1912, 37 Stat. L., 76, c. 63.

SEC. 113. The State of West Virginia is divided into two districts to be known as the northern and southern districts of West Virginia. The *northern district* shall include the territory embraced, on the first day of July, nineteen hundred and ten, in the counties of Hancock, Brooke, Ohio, Marshall, Tyler, Pleasants, Wood, Wirt, Ritchie, Doddridge, Wetzel, Monongalia, Marion, Harrison, Lewis, Gilmer, Calhoun, Upshur, Barbour, Taylor, Preston, Tucker, Randolph, Pendleton, Hardy, Grant, Mineral, Hampshire, Morgan, Berkeley, and Jefferson, with the waters thereof. *Terms* of the district court for the northern district shall be held at Martinsburg on the first Tuesday of April and the third Tuesday of September; at Clarksburg on the second Tuesday of April and the first Tuesday of October; at Wheeling on the first Tuesday of May and the third Tuesday of October; at Philippi on the fourth Tuesday of May and the second Tuesday of November; and at Parkersburg on the second Tuesday of January and the second Tuesday of June: *Provided*, That a place for holding court at Philippi shall be furnished free of cost to the United States by Barbour County until other provision is made therefor by law. The *southern district* shall include the territory embraced, on the first day of July, nineteen hundred and ten, in the counties of Jackson, Roane, Clay, Braxton, Webster, Nicholas, Pocahontas, Greenbrier, Fayette, Boone, Kanawha, Putnam, Mason, Cabell, Wayne, Lincoln, Logan, Mingo, Raleigh, Wyoming, McDowell, Mercer, Summers, and Monroe, with the waters thereof. Terms of the district court for the southern district shall be held at Charleston on the first Tuesday in June and the third Tuesday in November; at Huntington on the first Tuesday in April and the first Tuesday after the third Monday in September; at Bluefield on the first Tuesday in May and the third Tuesday in October; at Addison on the first Tuesday in September; and at Lewisburg on the second Tuesday in July: *Provided*, That a place for holding court at Addison shall be furnished free of cost to the United States. (*36 Stat. L., 1129.*)

Rooms at Philippi.

Southern district.

Terms.

Rooms at Addison.

This section was amended as here given by the act of March 23, 1912, changing the time of holding court at Philippi, Addison and Lewisburg. Otherwise the section states in concise terms what was the existing law.

Wisconsin.

R. S., ss. 550, 572, 576.
16 June, 1874, 18 Stat. L., 75, c. 286; 1 Supp., 14.
5 Aug., 1886, 24 Stat. L., 337, c. 932; 1 Supp., 515.
31 Mar., 1892, 27 Stat. L., 12, c. 28; 2 Supp., 5.
26 May, 1900, 31 Stat. L., 219, c. 591; 2 Supp., 1179.
28 Mar., 1904, 33 Stat. L., 152, c. 849.

SEC. 114. The State of Wisconsin is divided into two districts, to be known as the eastern and western districts of Wisconsin. The *eastern district* shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Brown, Calumet, Dodge, Door, Florence, Fond du Lac, Forest, Green Lake, Kenosha, Kewaunee, Langlade, Manitowoc, Marinette, Marquette, Milwaukee, Oconto, Outagamie, Ozaukee, Racine, Shawano, Sheboygan, Walworth, Washington, Waukesha, Waupaca, Waushara, and Winnebago. *Terms* of the district court for said district shall be held at Milwaukee on the first Mondays in January and October; at Oshkosh on the second Tuesday in June; and at Green Bay on the

25 Feb., 1909, 35 Stat. L., 647, c. 192.

Western district.

first Tuesday in April. The *western district* shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Adams, Ashland, Barron, Bayfield, Buffalo, Burnett, Chippewa, Clark, Columbia, Crawford, Dane, Dunn, Douglas, Eau Claire, Grant, Green, Iowa, Iron, Jackson, Jefferson, Juneau, La Crosse, Lafayette, Lincoln, Marathon, Monroe, Oneida, Pepin, Pierce, Polk, Portage, Price, Richland, Rock, Rusk, Saint Croix, Sauk, Sawyer, Taylor, Trempealeau, Vernon, Vilas, Washburn, and Wood.

Terms.

Terms of the district court for said district shall be held at Madison on the first Tuesday in December; at Eau Claire on the first Tuesday in June; at La Crosse on the third Tuesday in September; and at Superior on the fourth Tuesday in January and the second Tuesday in July.

Admiralty and maritime jurisdiction.

The district courts for each of said districts shall be open at all times for the purpose of hearing and deciding causes of admiralty and maritime jurisdiction, so far as the same can be done without a jury.

Offices.

The clerk of the court for the western district shall maintain an office in charge of himself or a deputy at Madison, at La Crosse, and at Superior, which shall be kept open at all times for the transaction of the business of the court. The marshal for the western district shall appoint a deputy marshal who shall reside and keep his office at Superior.

Return of process at Superior.

All writs and other process, except criminal warrants, issued at Superior, may be made returnable at Superior; and the clerk at that place shall keep in his office the original records of all actions, prosecutions, and special proceedings so commenced and pending therein. Criminal warrants may be returned at any place within the district where court is held. Whenever warrants issued at Superior shall be returned at any other place, the clerk of the court wherein the warrant is returned, shall certify the same, under the seal of the court, together with the plea and other proceedings had thereon, and the determination of the court upon such plea or proceedings, with all papers and orders filed in reference thereto, to the clerk of the court at Superior; and the clerk at Superior shall enter upon his records a minute of the proceedings had upon the return of said warrant, certified as aforesaid.

Trial of causes.

All causes and proceedings instituted in the court at Superior, shall be tried therein, unless by consent of the parties, or upon the order of the court, they are transferred to another place for trial. (*36 Stat. L., 1129.*)

Following the policy stated in the general note on this chapter, the number of clerks in the western district has been reduced from three to one, and in lieu thereof deputy clerks provided for.

After the division of Wisconsin into judicial districts, certain new counties were created by the legislature of that State, and the lines were so drawn that three counties were partly in one judicial district and partly in another. This has been corrected by the assignment of the counties concerned to one district or the other, as their geographical location seemed to indicate.

That state legislation organizing new counties and changing county lines does not change the territorial limits of the districts, see Hyde *v.* Victoria Land Co., 125 Fed., 972.

Wyoming.

SEC. 115. The State of Wyoming and the Yellowstone National Park shall constitute one judicial district, to be known as the district of Wyoming. *Terms* of the district court for said district shall be held at Cheyenne on the second Mondays in May and November; at Evanston on the second Tuesday in July; at Lander on the first Monday in October; and the said court shall hold one session annually at Sheridan, and in said national park, at such dates as the court may order. The marshal and clerk of the said court shall each, respectively, appoint at least one deputy to reside at Evanston, and one to reside at Lander, unless he himself shall reside there, and shall also maintain an office at each of those places: *Provided*, That until a public building is provided at Lander, suitable accommodations for

10 July, 1890, 26 Stat. L., 225, c. 664, s. 16; 1 Supp., 770.
23 May, 1892, 27 Stat. L., 39, c. 77; 2 Supp., 22.
5 July, 1892, 27 Stat. L., 72, c. 145, s. 8; 2 Supp., 29.
7 May, 1894, 28 Stat. L., 73, c. 72; 2 Supp., 183.
13 Apr., 1906, 34 Stat. L., 111, c. 1619.
6 Mar., 1908, 35 Stat. L., 37, c. 56.

holding court in said town shall be furnished the Government at an expense not to exceed three hundred dollars annually. The marshal of the United States for the said district may appoint one or more deputy marshals for the Yellowstone National Park, who shall reside in said park. (*36 Stat. L., 1130.*)

Rooms at Lander.

Existing law provided that terms of the United States court for the district might be held in the Yellowstone National park for the trial of offenses committed therein. In view of this fact it was considered that the park should be made distinctly a part of the district of Wyoming.

CHAPTER SIX.

CIRCUIT COURTS OF APPEALS.

Circuits.

R. S., s. 604. 26 June, 1876, 19 Stat. L., 61, c. 147; 1 Supp., 106. 22 Feb., 1889, 25 Stat. L., 682, c. 180, s. 21; 1 Supp., 649. 3 July, 1890, 26 Stat. L., 217, c. 656, s. 16; 1 Supp., 767. 10 July, 1890, 26 Stat. L., 225, c. 664, s. 16; 1 Supp., 770. 3 Mar., 1891, 26 Stat. L., 830, c. 517, s. 13; 1 Supp., 905. 16 July, 1894, 28 Stat. L., 110, c. 138, s. 14; 2 Supp., 200. 16 June, 1906, 34 Stat. L., 275, c. 3335, s. 13.

SEC. 116. There shall be nine judicial circuits of the United States, constituted as follows:

First. The first circuit shall include the districts of Rhode Island, Massachusetts, New Hampshire, and Maine.

Second. The second circuit shall include the districts of Vermont, Connecticut, and New York.

Third. The third circuit shall include the districts of Pennsylvania, New Jersey, and Delaware.

Fourth. The fourth circuit shall include the districts of Maryland, Virginia, West Virginia, North Carolina, and South Carolina.

Fifth. The first circuit shall include the districts of Georgia, Florida, Alabama, Mississippi, Louisiana, and Texas.

Sixth. The sixth circuit shall include the districts of Ohio, Michigan, Kentucky, and Tennessee.

Seventh. The seventh circuit shall include the districts of Indiana, Illinois, and Wisconsin.

Eighth. The eighth circuit shall include the districts of Nebraska, Minnesota, Iowa, Missouri, Kansas, Arkansas, Colorado, Wyoming, North Dakota, South Dakota, Utah, and Oklahoma.

Ninth. The ninth circuit shall include the districts of California, Oregon, Nevada, Washington, Idaho, Montana, and Hawaii. (*36 Stat L., 1131.*)

This section sets out in concise language the States constituting the nine judicial circuits, as found in the existing law.

That Alaska is a part of the ninth circuit, see Interstate Commerce Commission *v.* Humboldt Steamship Co., 224 U. S., 474, 481.

Circuit courts.

R. S., s. 608. 3 Mar., 1891, 26 Stat. L., 826, c. 517, s. 2; 1 Supp., 901.

SEC. 117. There shall be in each circuit a circuit court of appeals, which shall consist of three judges, of whom two shall constitute a

quorum, and which shall be a court of record, with appellate jurisdiction, as hereinafter limited and established. (*36 Stat. L., 1131.*)

This section is a reenactment of the existing law, by substituting the words "shall be" for "is hereby," and the word "hereinafter" for the words "is hereafter."

"The act creating the circuit court of appeals does not create a court in and for a district, but one in and for each circuit. . . . When a case is transferred to the court of appeals it passes beyond the limits within which a district attorney has jurisdiction and exercises his powers." U. S. *v.* Winston, 170 U. S., 524. When a quorum is present, see Peters *v.* Hanger, 136, Fed., 181.

Circuit judges.

R. S., s. 607. 3 Mar., 1881, 21 Stat. L., 412, c. 130; 1 Supp., 320. 3 Mar., 1887, 24 Stat. L., 492, c. 347; 1 Supp., 558. 3 Mar., 1891, 26 Stat. L., 826, c. 517, s. 1; 1 Supp., 901. 23 July, 1894, 28 Stat. L., 115, c. 147; 2 Supp., 203. 8 Feb., 1895, 28 Stat. L., 643, c. 59; 2 Supp., 369. 18 Feb., 1895, 28 Stat. L., 665, c. 94; 2 Supp., 376. 25 Jan., 1899, 30 Stat. L., 803, c. 56; 2 Supp., 936. 23 Feb., 1899, 30 Stat. L., 846, c. 186; 2 Supp., 943. 17 Apr., 1902, 32 Stat. L., 106, c. 530. 31 Jan., 1903, 32 Stat. L., 791, c. 345. 21 Jan., 1905, 33 Stat. L., 611, c. 51. 3 Mar., 1905, 33 Stat. L., 992, c. 1427. 13 Jan., 1912, 37 Stat. L., 52, c. 9.

SEC. 118. There shall be in the second, seventh, and eighth circuits, respectively, four circuit judges; in the fourth circuit, two circuit judges; and in each of the other circuits, three circuit judges, to be appointed by the President, by and with the advice and consent of the Senate. They shall be entitled to receive a salary at the rate of seven thousand dollars a year each, payable monthly. Each circuit judge shall reside within his circuit. The circuit judges in each circuit shall be judges of the circuit court of appeals in that circuit, and it shall be the duty of each circuit judge in each circuit to sit as one of the judges of the circuit court of appeals in that circuit from time to time according to law: *Provided*, That nothing in this section shall be construed to prevent any circuit judge holding district court or serving in the Commerce Court, or otherwise, as provided for and authorized in other sections of this act. (*36 Stat. L., 1131.*)

As originally enacted, this section contained the existing law except as to the number of judges in the fourth circuit. The amendment of January 13, 1912, is now included.

That the power of a circuit judge is coextensive with that of the circuit justice allotted to the circuit, see Horn *v.* Pere Marquette R. Co., 151 Fed., 626.

Allotment of justices to the circuits.

R. S., s. 606.

SEC. 119. The Chief Justice and associate justices of the Supreme Court shall be allotted among the circuits by an order of the court, and a new allotment shall be made whenever it becomes necessary or convenient by reason of the alteration of any circuit, or of the new appointment of a Chief Justice or associate justice, or otherwise. If a new allotment becomes necessary at any other time than during a term, it shall be made by the Chief Justice, and shall be binding until the next term and until a new allotment by the court. Whenever, by reason of death or resignation, no justice is allotted to a circuit, the Chief Justice may, until a justice is regularly allotted thereto, temporarily assign a justice of another circuit to such circuit. (*36 Stat. L., 1131.*)

Section 618, Revised Statutes, has been added at the end of section 606, and so modified as to permit the Chief Justice to temporarily assign any justice to a circuit, when by reason of death or resignation none is assigned thereto, until a justice is regularly allotted thereto.

"The justices of the Supreme Court have been members of the Circuit Courts of the United States ever since the organization of the government, and their attendance on the circuit and appearance at the places where the courts are held has always been thought to be a matter of importance." In re Neagle, 135 U. S., 1, 55 They do not require distinct commissions for that purpose. Stuart *v.* Laird, 1 Cranch, 299.

Chief Justice and associate justices of Supreme Court, and district judges, may sit in circuit court of appeals.

3 Mar., 1891, 26 Stat. L., 827, c. 517, s. 3; 1 Supp., 902.

SEC. 120. The Chief Justice and the associate justices of the Supreme Court assigned to each circuit, and the several district judges within each circuit, shall be competent to sit as judges of the circuit court of appeals within their respective circuits. In case the Chief Justice or an associate justice of the Supreme Court shall attend at any session of the circuit court of appeals, he shall preside. In the absence of such Chief Justice, or associate justice, the circuit judges in attendance upon the court shall preside in the order of the seniority of their respective commissions. In case the full court at any time shall not be made up by the attendance of the Chief Justice

or the associate justice, and the circuit judges, one or more district judges within the circuit shall sit in the court according to such order or provision among the district judges as either by general or particular assignment shall be designated by the court: *Provided*, That no judge before whom a cause or question may have been tried or heard in a district court, or existing circuit court, shall sit on the trial or hearing of such cause or question in the circuit court of appeals. (*36 Stat. L., 1132.*)

This section is but a reenactment, with slight changes of language, of section 3 of the circuit court of appeals act, the changes consisting in the dropping of the word "that" at the beginning of the section, in the substitution of the word "shall" for "should," and in the omission of the words "justice or" in the proviso, since it is not contemplated that the justices of the Supreme Court shall sit in the district courts.

DISQUALIFICATION OF JUDGE.

"The intention of Congress, in enacting that no judge before whom 'a cause or question may have been tried or heard,' in a district or circuit court, 'shall sit on the trial or hearing of such cause or question,' in the Circuit Court of Appeals, manifestly was to require that court to be constituted of judges uncommitted and uninfluenced by having expressed or formed an opinion in the court of first instance." . . . "The enactment, alike by its language and by its purpose, is not restricted to the case of a judge's sitting on a direct appeal from his own decree upon a whole cause, or upon a single question. A judge who has sat at the hearing below of a whole cause at any stage thereof is undoubtedly disqualified to sit in the circuit court of appeals at the hearing of the whole cause at the same or at any later stage. And as 'a cause,' in its usual and natural meaning includes all questions that have arisen or may arise in it, there is strong reason for holding that a judge who has once heard the cause, either upon the law or upon the facts, in the court of first instance, is thenceforth disqualified to take part, in the circuit court of appeals, at the hearing and decision of the cause or of any question arising therein. But, however that may be, a judge who has once heard the cause upon its merits in the court of first instance is certainly disqualified from sitting in the circuit court of appeals on the hearing and decision of any question, in the same cause, which involves in any degree matter upon which he had occasion to pass in the lower court." Moran *v.* Dillingham, 174 U. S., 157. That three regularly designated district judges constitute a quorum, see Peters *v.* Hanger, 136 Fed., 181.

See also Rexford *v.* Brunswick-Balke-Collender Co., Sup. Ct., Apr. 14, 1913.

Justices allotted to circuits, how designated.

R. S., s. 605.

SEC. 121. The words "circuit justice" and "justice of a circuit," when used in this title, shall be understood to designate the justice of the Supreme Court who is allotted to any circuit; but the word "judge," when applied generally to any circuit, shall be understood to include such justice. (*36 Stat. L., 1132.*)

This section made no change in the existing law.

On the power of a justice who is not allotted to any particular circuit, see Hudson *v.* Parker, 156 U. S., 284.

Seals, forms of process, and rules.

3 Mar., 1891, 26 Stat. L., 826, c. 517, s. 2; 1 Supp., 902.

SEC. 122. Each of said circuit courts of appeals shall prescribe the form and style of its seal, and the form of writs and other process and procedure as may be conformable to the exercise of its jurisdiction; and shall have power to establish all rules and regulations for the conduct of the business of the court within its jurisdiction as conferred by law. (*36 Stat. L., 1132.*)

This section is a reenactment of the existing law, except for changes in phraseology which were necessary for the purposes of revision.

That only the judges who joined in rendering a decision are responsible for the granting or refusing of a petition for a rehearing, see World's Columbian Exposition Co. *v.* France, 96 Fed., 687.

Marshals.

3 Mar., 1891, 26 Stat. L., 826, c. 517, s. 2; 1 Supp., 902. 16 July, 1892, 27 Stat. L., 222, c. 196; 2 Supp., 40.

SEC. 123. The United States marshals in and for the several districts of said courts shall be the marshals of said circuit courts of appeals, and shall exercise the same powers and perform the same duties, under the regulations of the court, as are exercised and performed by the marshal of the Supreme Court of the United States, so far as the same may be applicable. (*36 Stat. L., 1132.*)

The language of the two provisions in the acts above cited has been transposed, in order to state in concise language what was the existing law.

Clerks.

R. S., s. 619. 3 Mar., 1891, 26 Stat. L., 826, c. 517, s. 2; 1 Supp., 902.

SEC. 124. Each court shall appoint a clerk, who shall exercise the same powers and perform the same duties in regard to all matters within its jurisdiction, as are exercised and performed by the clerk of the Supreme Court, so far as the same may be applicable. (*36 Stat. L., 1132.*)

This section states what was the existing law, although there has been a transposition of the language of the act from which the section is drawn, the words "who shall perform and exercise the same duties and powers" being changed so as to read "who shall exercise the same powers and perform the same duties," etc. The word "each" at the beginning of the section has been substituted for the word "the," and the word "now" before the word "exercised" has been omitted.

"The clerk is a necessary adjunct and part of the court. His possession is the possession of the court." Interference with papers in his possession is a contempt of court. In re Lyman, 55 Fed., 42.

See also U. S. *v.* King, 147 U. S., 676; U. S. *v.* Harsha, 172 U. S., 567.

Deputy clerks; appointment and removal.

3 Feb., 1911, 36 Stat. L., 895, c. 33.

SEC. 125. The clerk of the circuit court of appeals for each circuit may, with the approval of the court, appoint such number of deputy clerks as the court may deem necessary. Such deputies may be removed at the pleasure of the clerk appointing them, with the approval of the court. In case of the death of the clerk his deputy or deputies shall, unless removed by the court, continue in office and perform the duties of the clerk in his name until a clerk is appointed and has qualified; and for the defaults or misfeasances in office of any such deputy, whether in the lifetime of the clerk or after his death, the clerk and his estate and the sureties on his official bond shall be liable, and his executor or administrator shall have such remedy for such defaults or misfeasances committed after his death as the clerk would be entitled to if the same had occurred in his lifetime. (*36 Stat. L., 1132.*)

This section is new, there being no former authority for the appointment of a deputy clerk. The provisions of this section are similar to those in section 4 of this code providing for the appointment of deputy clerks for the district courts.

Terms.

3 Mar., 1891, 26 Stat. L., 827, c. 517, s. 3; 1 Supp., 902. 28 May, 1896, 29 Stat. L., 177, c. 252; 2 Supp., 477. 9 June, 1902, 32 Stat. L., 329, c. 1071. 30 June, 1902, 32 Stat. L., 548, c. 1333. 18 Dec., 1902, 32 Stat. L., 756, c. 4. 30 Jan., 1903, 32 Stat. L., 784, c. 335. 4 Mar., 1904, 33 Stat. L., 59, c. 395. 22 Apr., 1904, 33 Stat. L., 249, c. 1420.

SEC. 126. A term shall be held annually by the circuit courts of appeals in the several judicial circuits at the following places, and at such times as may be fixed by said courts, respectively: In the first circuit, in Boston; in the second circuit, in New York; in the third circuit, in Philadelphia; in the fourth circuit, in Richmond; in the fifth circuit, in New Orleans, Atlanta, Fort Worth, and Montgomery; in the sixth circuit, in Cincinnati; in the seventh circuit, in Chicago; in the eighth circuit, in Saint Louis, Denver or Cheyenne, and Saint Paul; in the ninth circuit, in San Francisco, and each year in two other places in said circuit to be designated by the judges of said court; and in each of the above circuits, terms may be held at such other times and in such other places as said courts, respectively, may from time to time designate: *Provided*, That terms shall be held in Atlanta on the first Monday in October, in Fort Worth on the first Monday in November, in Montgomery on the third Monday in October, in Denver or in Cheyenne on the first Monday in September, and in Saint Paul on the first Monday in May. All appeals, writs of error, and other appellate proceedings which may be taken or prosecuted from the district courts of the United States in the State of Georgia, in the State of Texas, and in the State of Alabama, to the circuit court of appeals for the fifth judicial circuit shall be heard and disposed of, respectively, by said court at the terms held in Atlanta, in Fort Worth, and in Montgomery, except that appeals or writs of error in cases of injunctions and all other cases which under the statutes and rules, or in the opinion of the court, are entitled to be brought to a speedy hearing may be heard and disposed of wherever said court may be sitting. All appeals, writs of

Proviso.

Designated terms.

Appeals, etc., fifth circuit.

Injunctions.

Appeals from court at Beaumont, Tex., to New Orleans.

error, and other appellate proceedings which may hereafter be taken or prosecuted from the district court of the United States at Beaumont, Texas, to the circuit court of appeals for the fifth circuit, shall be heard and disposed of by the said circuit court of appeals at the terms of court held in New Orleans: *Provided*, That nothing herein shall prevent the court from hearing appeals or writs of error wherever the said courts shall sit, in cases of injunctions and in all other cases which, under the statutes and the rules, or in the opinion of the court, are entitled to be brought to a speedy hearing. All appeals, writs of error, and other appellate proceedings which may be taken or prosecuted from the district courts of the United States in the States of Colorado, Utah, and Wyoming, and the supreme court of the Territory of New Mexico to the circuit court of appeals for the eighth judicial circuit, shall be heard and disposed of by said court at the terms held either in Denver or in Cheyenne, except that any case arising in any of said States or Territory may, by consent of all the parties, be heard and disposed of at a term of said court other than the one held in Denver or Cheyenne. (*36 Stat. L., 1132.*)

Injunctions.

Hearings at Denver and Cheyenne.

This section sets out in concise language the times and places of holding terms of the circuit courts of appeals in the various circuits, and was the existing law.

SEC. 127. The marshals for the several districts in which said circuit courts of appeals may be held shall, under the direction of the Attorney-General, and with his approval, provide such rooms in the public buildings of the United States as may be necessary for the business of said courts, and pay all incidental expenses of said court, including criers, bailiffs, and messengers: *Provided*, That in case proper rooms can not be provided in such buildings, then the marshals, with the approval of the Attorney-General, may, from time to time, lease such rooms as may be necessary for such courts. (*36 Stat. L., 1133.*)

Rooms for court; how provided.

3 Mar., 1891, 26 Stat. L., 829, c. 517, s. 9; 1 Supp., 904.

This section was the existing law. The word "that" at the beginning of the section is omitted, and the word "for" substituted for the word "of" in the first line. The provision respecting the pay of marshals has been carried into the chapter on the fees and salaries of such officers.

SEC. 128. The circuit courts of appeals shall exercise appellate jurisdiction to review by appeal or writ of error final decisions in the district courts, including the United States district court for Hawaii, in all cases other than those in which appeals and writs of error may be taken direct to the Supreme Court, as provided in section two hundred and thirty-eight, unless otherwise provided by law; and, except as provided in sections two hundred and thirty-nine and two hundred and forty, the judgments and decrees of the circuit courts of appeals shall be final in all cases in which the jurisdiction is dependent entirely upon the opposite parties to the suit or controversy being aliens and citizens of the United States, or citizens of different States; also in all cases arising under the patent laws, under the copyright laws, under the revenue laws, and under the criminal laws, and in admiralty cases. (*36 Stat. L., 1133.*)

Jurisdiction; when judgment final.

3 Mar., 1891, 26 Stat. L., 828, c. 517, s. 6; 1 Supp., 903.
3 Mar., 1909, 35 Stat. L., 838, c. 269, s. 1.

Exceptions.

This section is drawn from the appropriate provisions of section 6 of the circuit court of appeals act of March 3, 1891, the remaining provisions being revised in section 238, 239 and 240. It is impossible to point out in detail the transposition of the language for purposes of revision. The section reenacts what was the existing law. Hawaii was included in this section because under section 86 of the organic act for that territory, as last amended (35 Stat., 838), appeals and writs of error may be taken to the circuit court of appeals for the ninth circuit in the same classes of cases as from a district court of the United States.

JURISDICTION.

Considering the statute from which this section was drawn, Chief Justice Fuller said that the appellate jurisdiction not vested in the Supreme Court was vested

in the circuit court of appeals, and the entire jurisdiction distributed. Lau Ow Bew *v.* U. S., 144 U. S., 56. No pecuniary limitation is imposed on this jurisdiction. Kirby *v.* American Soda Fountain Co., 194 U. S., 144.

FINALITY OF DECISIONS APPEALABLE.

"The rule for determining whether, for the purposes of an appeal, a decree is final, is, in brief, whether the decree disposes of the entire controversy between the parties." La Bourgogne, 210 U. S., 112. See also Morgan *v.* Thompson, 124 Fed., 203; Bostwick *v.* Brinkerhog, 106 U. S., 3; McGourkey *v.* Toledo & Ohio Ry. Co., 146 U. S., 545.

"IN ALL CASES OTHER THAN," ETC.

Considering this provision, the Supreme Court has said that the circuit court of appeals has power to review the judgment of the circuit court in every case where the jurisdiction attached by reason of diverse citizenship, "notwithstanding constitutional questions may have arisen after the jurisdiction of the circuit court attached." American Sugar Ref. Co. *v.* New Orleans, 181 U. S., 280. See also Union Cent. L. Ins. Co. *v.* Champlin, 116 Fed., 858. "The words "unless otherwise provided by law" were manifestly inserted out of abundant caution, in order that any qualification of the jurisdiction by contemporaneous or subsequent acts should not be construed as taking it away except when expressly so provided. To hold that the words referred to prior laws would defeat the purpose of the act and be inconsistent with its context and its repealing clause." Lau Ow Bew *v.* U. S., 144 U. S., 56. See U. S. *v.* Dalcour, 203 U. S., 408.

WHEN DECISIONS OF CIRCUIT COURTS OF APPEALS ARE FINAL.

The jurisdiction which is "dependent entirely on diversity of citizenship" is the jurisdiction of the circuit court as originally invoked. Huguley Mfg. Co. *v.* Galeton Cotton Mills, 184 U. S., 294. "It is to be observed that the line of divison between cases appealable directly to this court and those appealable to the circuit court of appeals, made by section 5 of the act, is based upon the nature of the case or of the questions of law raised. But the line of division between cases appealable from the circuit court of appeals to this court and those not so appealable, drawn by section 6, is different, and is determined, not by the nature of the case or of the questions of law raised, but by the sources of jurisdiction of the trial court, namely the circuit court or the district court, whether the jurisdiction rests upon the character of the parties or the nature of the case." Macfadden *v.* U. S., 213 U. S., 294. Where jurisdiction is invoked on the ground of diverse citizenship, the decision of the circuit court of appeals is final, though other questions not pleaded may be afterwards raised. Arbuckle *v.* Blackburn, 191 U. S., 413; Bagley *v.* General Fire Extinguisher Co., 212 U. S., 478. But the decision is not final where the petition shows a case of diverse citizenship, and jurisdiction is also invoked upon the ground of a Federal question. Howard *v.* U. S., 184 U. S., 681. See Weir *v.* Rountree, 216 U. S., 607.

CASES ARISING UNDER THE PATENT LAWS.

The decision of the circuit court of appeals is not final in a suit brought by the United States to cancel a patent. U. S. *v.* American Bell Tel. Co., 159 U. S., 548.

COPYRIGHT LAWS.

Press Pub. Co. *v.* Monroe, 164 U. S., 105; Warner *v.* Searle & Hereth Co., 191 U. S., 195.

CASES UNDER THE REVENUE LAWS.

The decision of the court is final in a case to review a decision of the board of general appraisers in the matter of classification of certain imported articles. Anglo-Californian Bank *v.* U. S., 175 U. S., 37. But the decision is not final where the case involves the construction of the Constitution or of an act of Congress relating to internal revenue. Spreckels Sugar Ref. Co. *v.* McClain, 192 U. S., 397. Or where the case involves the construction of an international trade agreement. Altman & Co. *v.* U. S., 224 U. S., 583. The postal laws are revenue laws within the meaning of this section. Warner *v.* Fowler, 4 Blatchf., 311, 29 Fed. Cas., No. 17, 182.

CASES UNDER THE CRIMINAL LAWS.

A judgment imposing a fine for contempt is a judgment in a criminal case, and is final under this section. O'Neal *v.* U. S., 190 U. S., 36. That a judgment

in a criminal case is "final by the very terms of the act," although constitutional questions might have been invoked, see MacFadden *v.* U. S., 213 U. S., 288.

ADMIRALTY CASES.

Proceedings to limit the liability of ship owners, under an act of Congress and the rules of the Supreme Court, are admiralty cases which are made final in the circuit court of appeals. Oregon R. & N. Co. *v.* Balfour, 179 U. S., 55.

Appeals in proceedings for injunctions or receivers.

3 Mar., 1891, 26 Stat. L., 828, c. 517, s. 7; 1 Supp., 904. 18 Feb., 1895, 28 Stat. L., 666, c. 96; 2 Supp., 376. 6 June, 1900, 31 Stat. L., 660, c. 803; 2 Supp., 1445. 14 Apr., 1906, 34 Stat. L., 116, c. 1627.

SEC. 129. Where upon a hearing in equity in a district court, or by a judge thereof in vacation, an injunction shall be granted, continued, refused, or dissolved by an interlocutory order or decree, or an application to dissolve an injunction shall be refused, or an interlocutory order or decree shall be made appointing a receiver, an appeal may be taken from such interlocutory order or decree granting, continuing, refusing, dissolving, or refusing to dissolve, an injunction, or appointing a receiver, to the circuit court of appeals, notwithstanding an appeal in such case might, upon final decree under the statutes regulating the same, be taken directly to the Supreme Court: *Provided*, That the appeal must be taken within thirty days from the entry of such order or decree, and it shall take precedence in the appellate court; and the proceedings in other respects in the court below shall not be stayed unless otherwise ordered by that court, or the appellate court, or a judge thereof, during the pendency of such appeal: *Provided, however*, That the court below may, in its discretion, require as a condition of the appeal an additional bond. (*36 Stat. L., 1134.*)

Proviso.

Precedence of appeal.

Section 7 of the act of March 3, 1891 (1 Supp., 904), provided that appeals might be taken to the circuit court of appeals from interlocutory orders "granting or continuing an injunction." This was found to be unsatisfactory, and by the act of February 18, 1895 (2 Supp., 376), the section was amended so as to cover orders by which an injunction "is granted, continued, refused, or dissolved, or an application to dissolve an injunction is refused." Later it was desired to extend the appeal to orders in receivership cases, and this was done by the act of June 6, 1900 (2 Supp., 1445). This law was so drawn, however, that it operated to repeal the act of 1895, which, it is to be presumed, was not intended. (Wire Co. *v.* Boyce, 104 Fed. Rep., 172; Rowan *v.* Ide, 107 Fed. Rep., 161.) This resulted from the fact that the act of 1900 amended the act of 1891, and overlooked the act of 1895. In view of this, the committee has restored the provisions of the act of 1895 permitting an appeal from an interlocutory order "refusing or dissolving," or "refusing to dissolve an injunction." In this connection, it may be noted that by the acts of 1891, 1895, and 1900 the cases in which appeals might be taken were those in which an appeal might be taken from a final decree to the circuit court of appeals. The act of 1906 removed this limitation by providing that the appeals might be taken in *any* case from any such order or decree, although the case might be one which upon final decree would go directly to the Supreme Court. To remove any doubt upon this point, the committee has added, immediately preceding the first proviso, the words "notwithstanding an appeal in such case might upon final decree, under the statutes regulating the same, be taken directly to the Supreme Court."

Appeals to the Supreme Court in injunction proceedings are provided for in section 266 of this Code (p. 136).

PURPOSE OF SECTION.

"The manifest intent of this provision, read in the light of the previous practice in the courts of the United States, contrasted with the practice in courts of equity of the highest authority elsewhere, appears to this court to have been, not only to permit the defendant to obtain immediate relief from an injunction, the continuance of which throughout the progress of the cause might seriously affect his interests; but also to save both parties from the expense of further litigation, should the appellate court be of opinion that the plaintiff was not entitled to an injunction because his bill had no equity to support it." Smith *v.* Vulcan Iron Works, 165 U. S., 525; Mast, Foos & Co. *v.* Stover M'fg. Co., 177 U. S., 495.

INTERLOCUTORY ORDERS.

In holding that this section was not intended to give to patent or other cases in which interlocutory decrees or orders were made any precedence, the Supreme Court said: "Obviously that which is contemplated is a review of the interlocutory order, and of that only. It was not intended that the cause as a whole should be transferred to the appellate court prior to the final decree. The case,

except for the hearing on the appeal from the interlocutory order, is to proceed in the lower court as though no such appeal had been taken, unless otherwise specially ordered. . . . It is generally true that it is of importance to litigants that their cases be disposed of promptly, but other cases have the same right to early hearing. And the purpose of Congress in this legislation was that there be an immediate review of the interlocutory proceedings and not an advancement generally over other litigation." Ex parte National Enameling Co., 201 U. S., 162.

As to the meaning of the phrase "upon a hearing in equity," see Taylor *v.* Breese, 163 Fed., 678. On "continuing an injunction," see Dreutzer *v.* Frankfort Land Co., 65 Fed., 642. See also March *v.* Romare, 116 Fed., 354; Pioneer Lace M'fg. Co. *v.* Dodd, 181 Fed., 688; Electric Co. *v.* Seattle, etc., R. Co., 185 Fed., 365; Alabama R. R. Com. *v.* Central R. R. of Ga., 170 Fed., 225.

APPEALS.

That a stay of proceedings pending the appeal is not a matter of right, but of discretion, see In re Haberman M'fg. Co., 147 U. S., 528. An appeal from a motion granting a preliminary injunction does not remove the cause to the circuit court of appeals, but the cause generally remains in the district court, and continues in the control of that court. Foote *v.* Parsons Non-Skid Co., 196 Fed., 951.

Appellate and supervisory jurisdiction under the bankrupt act.

1 July, 1898, 30 Stat. L., 553, c. 541, ss. 24, 25.

SEC. 130. The circuit courts of appeals shall have the appellate and supervisory jurisdiction conferred upon them by the Act entitled "An Act to establish a uniform system of bankruptcy throughout the United States," approved July first, eighteen hundred and ninety-eight, and all laws amendatory thereof, and shall exercise the same in the manner therein prescribed. (*36 Stat. L., 1134.*)

This section merely declares the appellate jurisdiction vested in the circuit courts of appeals by the bankruptcy act, and the acts amendatory thereof, and the manner of its exercise. (See sec. 252, p. 129.)

That the jurisdiction of the circuit court of appeals is confined to revision in matter of law "on due notice and petition," and not to a proceeding in bankruptcy which is not an independent suit, see First Nat. Bank *v.* Title & Trust Co., 198 U. S., 280. As to what may be appealed, see Burleigh *v.* Foreman, 125 Fed., 217; In re Friend, 134 Fed., 778; In re Mueller, 135 Fed., 711; In re Lee, 182 Fed., 579. Where an intervention in a bankruptcy proceeding was held to be a "controversy" within the meaning of the Bankruptcy act, see Knapp *v.* Milwaukee Trust Co., 216 U. S., 545. See also Morehouse *v.* Pacific Hardware Co., 177 Fed., 337, 339.

Appeals from United States court for China.

R. S., s. 4096. 30 June, 1906, 34 Stat. L., 814, c. 3934.

SEC. 131. The circuit court of appeals for the ninth circuit is empowered to hear and determine writs of error and appeals from the United States court for China, as provided in the Act entitled "An Act creating a United States court for China and prescribing the jurisdiction thereof," approved June thirtieth, nineteen hundred and six. (*36 Stat. L., 1134.*)

This section is merely declaratory of the appellate jurisdiction vested in the circuit court of appeals for the ninth circuit by the act creating a United States court for China.

In the case of Biddle *v.* U. S., 156 Fed., 759, 761, the circuit court of appeals said: "The object of the treaty and the intention of Congress, in creating the United States court for China, in so far as that court is given criminal jurisdiction, was to throw around American citizens residing or sojourning in China, and there charged with crime, the beneficent principles of the laws of the United States relating to the trial of persons charged with crime—the rules of evidence, the presumption of innocence, the degree of proof necessary to convict, the right of the accused to be confronted with witnesses against him, exemption from being compelled to criminate himself, etc. But, while securing to them these privileges, the statute at the same time, made them subject to punishment for acts made criminal by any law of the United States, or for acts recognized as crimes under the common law."

Allowance of appeals, etc.

3 Mar., 1891, 26 Stat. L., 829, c. 517, s. 11; 1 Supp., 904.

SEC. 132. Any judge of a circuit court of appeals, in respect of cases brought or to be brought before that court, shall have the same powers and duties as to allowances of appeals and writs of error, and the conditions of such allowances, as by law belong to the justices or judges in respect of other courts of the United States, respectively. (*36 Stat. L., 1134.*)

This section states what was the existing law, the changes made in the language being minor in character.

That the circuit court of appeals or its judges "may exercise, in aid of its appellate jurisdiction in criminal cases, the same power in regard to the allowing of writs of error, or admission to bail pending a writ of error, which were formerly exercised in appellate proceedings by the Supreme Court or its justices, by virtue of the provisions of statutory law in force, or by implication from the grant of jurisdiction over proceedings in error," see McKnight *v.* U. S., 113 Fed., 452. See also Hudson *v.* Parker, 156 U. S., 282; Tornases *v.* Melsing, 106 Fed., 775; L. & N. R. Co. *v.* Behlmer, 169 U. S., 647.

Writs of error and appeals from the supreme courts of Arizona and New Mexico.

3 Mar., 1891, 26 Stat. L., 830, c. 517, s. 15; 1 Supp., 905.

SEC. 133. The circuit courts of appeals, in cases in which their judgments and decrees are made final by this title, shall have appellate jurisdiction, by writ of error or appeal, to review the judgments, orders, and decrees of the supreme courts of Arizona and New Mexico, as by this title they may have to review the judgments, orders, and decrees of the district courts; and for that purpose said Territories shall, by orders of the Supreme Court of the United States, to be made from time to time, be assigned to particular circuits. (*36 Stat. L., 1134.*)

This section is but a reenactment of section 15 of the circuit court of appeals act, the changes made in the language used being necessary for the purposes of revision. Otherwise the section states what was existing law.

In connection with this section see sections 134, 135, 238, 244, 245, 246, 247, and 248.

Under this section the circuit court of appeals was held to have no jurisdiction over a judgment from the Supreme Court of the Territory of New Mexico that was "not a case in admiralty, nor a case arising under the criminal, revenue or patent laws of the United States, nor a case between citizens and aliens of the United States, or between citizens of the different States." Aztec Mining Co. *v.* Ripley, 151 U. S., 79.

"The Territories of the United States, referred to in the 15th section of the act of 1891, are, in our opinion, those which it was contemplated would be assigned to some circuit, and they do not embrace Porto Rico." Royal Ins. Co. *v.* Martin, 192 U. S., 161.

The District Court of Alaska was held to be the "supreme court" of that Territory under section 15 of the act of March 3, 1891. Steamer Coquitlam *v.* U. S., 163 U. S., 346; Rasmussen *v.* U. S., 197 U. S., 524; Interstate Commerce Commission *v.* Humboldt Steamship Co., 224 U. S., 474.

See also Folsom *v.* U. S., 160 U. S., 121; In re Boles, 48 Fed., 75.

Writs of error and appeals from district court for Alaska to circuit court of appeals for ninth circuit.

3 Mar., 1899, 30 Stat. L., 1307, c. 429, s. 202; 2 Supp., 1061.

6 June, 1900, 31 Stat. L., 414, c. 786, ss. 504, 505; 2 Supp., 1289.

SEC. 134. In all cases other than those in which a writ of error or appeal will lie direct to the Supreme Court of the United States as provided in section two hundred and forty-seven, in which the amount involved or the value of the subject-matter in controversy shall exceed five hundred dollars, and in all criminal cases, writs of error and appeals shall lie from the district court for Alaska or from any division thereof, to the circuit court of appeals for the ninth circuit, and the judgments, orders, and decrees of said court shall be final in all such cases. But whenever such circuit court of appeals may desire the instruction of the Supreme Court of the United States upon any question or proposition of law which shall have arisen in any such case, the court may certify such question or proposition to the Supreme Court, and thereupon the Supreme Court shall give its instruction upon the question or proposition certified to it, and its instructions shall be binding upon the circuit court of appeals. (*36 Stat. L., 1134.*)

Certifying questions to Supreme Court.

This section is drawn from section 202 of the Criminal Code for Alaska, and from sections 504 and 505 of the Civil Code, and states what was the existing law on the subject. Those portions of the sections which authorize the taking of writs of error and appeal direct to the Supreme Court are revised in section 247. Formerly capital cases went direct to the Supreme Court. Section 247 was so modified as to take from the Supreme Court its jurisdiction of capital cases, the effect being to vest the right to review on a writ of error in the circuit court of appeals. This is accomplished, so far as this section is concerned, by the omission of the words "other than capital," after the words "and in all criminal cases."

On the question of certifying questions to the Supreme Court, see section 239 of this code (p. 121).

"It is evident that it is solely questions of gravity and importance that the circuit court of appeals should certify to us for instruction; and that it is only when such questions are involved that the power of this court to require a case

in which the judgment and decree of the court of appeals is made final, to be certified, can be properly invoked." Forsyth *v.* Hammond, 166 U. S., 514.

Suit in admiralty for forfeiture because of an alleged violation of the revenue laws. Steamer Coquitlam *v.* U. S., 163 U. S., 346.

Appeals and writs of error from Alaska; where heard.

11 Jan., 1909, 35 Stat. L., 585, c. 15.

SEC. 135. All appeals, and writs of error, and other cases, coming from the district court for the district of Alaska to the circuit court of appeals for the ninth circuit, shall be entered upon the docket and heard at San Francisco, California, or at Portland, Oregon, or at Seattle, Washington, as the trial court before whom the case was tried below shall fix and determine: *Provided*, That at any time before the hearing of any appeal, writ of error, or other case, the parties thereto, through their respective attorneys, may stipulate at which of the above-named places the same shall be heard, in which case the case shall be remitted to and entered upon the docket at the place so stipulated and shall be heard there. (*36 Stat. L., 1135.*)

Proviso.

Agreement for hearing.

This section states what was the existing law, the omission of the words "that hereafter," at the beginning of the section, and the words "in the State of" before "California," "Oregon," and "Washington," respectively, being on account of redundancy.

CHAPTER SEVEN.

THE COURT OF CLAIMS.

Appointment, oath, and salary of judges.

R. S., s. 1049.
12 Feb., 1903, 32 Stat. L., 825, c. 547.

SEC. 136. The Court of Claims, established by the act of Febuary twenty-fourth, eighteen hundred and fifty-five, shall be continued. It shall consist of a chief justice and four judges, who shall be appointed by the President, by and with the advice and consent of the

Senate, and hold their offices during good behavior. Each of them shall take an oath to support the Constitution of the United States, and to discharge faithfully the duties of his office. The chief justice shall be entitled to receive an annual salary of six thousand five hundred dollars, and each of the other judges an annual salary of six thousand dollars, payable monthly, from the Treasury. (*36 Stat. L., 1135.*)

This section states what was existing law, the increase in the salaries of the judges provided for in the act of February 1, 1903, beng carried into the section.

Seal.

R. S., s. 1050.

SEC. 137. The Court of Claims shall have a seal, with such device thereon as it may order. (36 Stat. L., 1136.)

This section states what was existing law.

Session; quorum.

R. S., s. 1052. 23 June, 1874, 18 Stat. L., 252, c. 468; 1 Supp., 47.

SEC. 138. The Court of Claims shall hold one annual session at the city of Washington, beginning on the first Monday in December and continuing as long as may be necessary for the prompt disposition of the business of the court. Any three of the judges of said court shall constitute a quorum, and may hold a court for the transaction of business: *Provided*, That the concurrence of three judges shall be necessary to the decision of any case. (*36 Stat. L., 1136.*)

This is a reenactment of the Revised Statute section, as amended by the act of June 23, 1874.

Officers of the court.

R. S., s. 1053.

Oath.

Removal.

Term of bailiff.

SEC. 139. The said court shall appoint a chief clerk, an assistant clerk, if deemed necessary, a bailiff, and a chief messenger. The clerks shall take an oath for the faithful discharge of their duties, and shall be under the direction of the court in the performance thereof; and for misconduct or incapacity they may be removed by it from office; but the court shall report such removals, with the cause thereof, to Congress, if in session, or if not, at the next session. The bailiff shall hold his office for a term of four years, unless sooner removed by the court for cause. (*36 Stat. L., 1136.*)

In recent appropriation acts, the messenger provided for in section 1053, Revised Statutes, is termed a *chief* messenger, for the reason that additional messengers are now provided for the court. The section therefore states what was existing law.

Salaries of officers.

R. S., s. 1054. 22 May, 1908, 35 Stat. L., 244, c. 186.

SEC. 140. The salary of the chief clerk shall be three thousand five hundred dollars a year; of the assistant clerk two thousand five hundred dollars a year; of the bailiff one thousand five hundred dollars a year, and of the chief messenger one thousand dollars a year, payable monthly from the Treasury. (*36 Stat. L., 1136.*)

This section states the salaries provided in the last three or four appropriation acts for the officers authorized by section 1054, Revised Statutes. In view of the general practice of Congress in increasing in appropriation acts the salaries paid to officers and clerks, this section may fairly be considered as stating what was existing law.

Clerk's bond.

R. S., s. 1055.

SEC. 141. The chief clerk shall give bond to the United States in such amount, in such form, and with such security as shall be approved by the Secretary of the Treasury. (*36 Stat. L., 1136.*)

This section is a reenactment, without change, of what was existing law.

Contingent fund.

R. S., s. 1056.

SEC. 142. The said clerk shall have authority when he has given bond as provided in the preceding section, to disburse, under the direction of the court, the contingent fund which may from time to time be appropriated for its use; and his accounts shall be settled by the proper accounting officers of the Treasury in the same way as the accounts of other disbursing agents of the Government are settled. (*36 Stat. L., 1136.*)

This section states what was the existing law.

Report to Congress; copies for departments, etc.

R. S., s. 1057.

Decisions to departments, etc.

SEC. 143. On the first day of every regular session of Congress, the clerk of the Court of Claims shall transmit to Congress a full and complete statement of all the judgments rendered by the court during the previous year, stating the amounts thereof and the parties in whose favor they were rendered, together with a brief synopsis of the nature of the claims upon which they were rendered. At the end of every term of the court he shall transmit a copy of its decisions to the heads of departments; to the Solicitor, the Comptroller, and the Auditors of the Treasury; to the Commissioner of the General Land Office and of Indian Affairs; to the chiefs of bureaus, and to other officers charged with the adjustment of claims against the United States. (*36 Stat. L., 1136.*)

The only changes made in this session consist in the use of the word "regular" for "December," in the first line of the section; and in the omission of the word "and" at the beginning of the last sentence. Otherwise the section reenacts what was existing law.

The purpose of this report is to advise Congress of the debts found to be due to individuals, so that provision for payment may be made. Irwin *v.* U. S., 23 Ct. Cl., 125. "The decisions of the Court of Claims in general, not appealed from, are guides to the executive officers of the Government, and furnish precedents for the executive departments in all other like cases." Meigs *v.* U. S., 20 Ct. Cl., 185.

Members of Congress not to practice in the court.

R. S., s. 1058.

Penalty.

SEC. 144. Whoever, being elected or appointed a Senator, Member of, or Delegate to Congress, or a Resident Commissioner, shall, after his election or appointment, and either before or after he has qualified, and during his continuance in office, practice in the Court of Claims, shall be fined not more than ten thousand dollars and imprisoned not more than two years; and shall, moreover, thereafter be incapable of holding any office of honor, trust, or profit under the Government of the United States. (*36 Stat. L., 1136.*)

The changes made in this section are to prohibit Members-elect of Congress from practicing in the Court of Claims, and adding penalties thereto.

Jurisdiction.

Claims against the United States.

R. S., s. 1059.

3 Mar., 1887, 24 Stat. L., 505, c. 359; 1 Supp., 559.

27 June, 1898, 30 Stat. L., 495, c. 503, s. 1; 2 Supp., 813.

Damages not sounding in tort.

War and other claims excepted.

SEC. 145. The Court of Claims shall have jurisdiction to hear and determine the following matters:

First. All claims (except for pensions) founded upon the Constitution of the United States or any law of Congress, upon any regulation of an Executive Department, upon any contract, express or implied, with the Government of the United States, or for damages, liquidated or unliquidated, in cases not sounding in tort, in respect of which claims the party would be entitled to redress against the United States either in a court of law, equity, or admiralty if the United States were suable: *Provided, however*, That nothing in this section shall be construed as giving to the said court jurisdiction to hear and determine claims growing out of the late civil war, and commonly known as "war claims," or to hear and determine other claims which, prior to March third, eighteen hundred and eighty-seven, had been rejected or reported on adversely by any court, department, or commission authorized to hear and determine the same.

Set-offs.

R. S., s. 1059, par. 2.

27 June, 1898, 30 Stat. L., 495, c. 503, s. 1; 2 Supp., 813.

1 July, 1898, 30 Stat. L., 649, c. 546, s. 3; 2 Supp., 880.

Limitation.

Second. All set-offs, counterclaims, claims for damages, whether liquidated or unliquidated, or other demands whatsoever on the part of the Government of the United States against any claimant against the Government in said court: *Provided*, That no suit against the Government of the United States, brought by any officer of the United States to recover fees for services alleged to have been performed for the United States, shall be allowed under this chapter until an account for said fees shall have been rendered and finally acted upon as required by law, unless the proper accounting officer of the Treasury fails to act finally thereon within six months after the account is received in said office.

Third. The claim of any paymaster, quartermaster, commissary of subsistence, or other disbursing officer of the United States, or of his administrators or executors, for relief from responsibility on account of loss by capture or otherwise, while in the line of his duty, of Government funds, vouchers, records, or papers in his charge, and for which such officer was and is held responsible. (*36 Stat. L., 1136.*)

Disbursing officers.

R. S., s. 1059, par. 3.

This section states in concise terms the existing jurisdiction of the Court of Claims, the changes in the language employed being necessary for puropses of revision, and to correct the imperfection in the text.

The act of January 20th, 1885 (23 Stat., 283), commonly known as the French Spoliation claims act, and the act of March 3, 1891, (26 Stat., 851), commonly known as the Indian depredation claims act, have not been carried into this section, for the reason that neither act is "one of a general nature, permanent in character." The former act requires (sec. 2) that suit shall be brought within two years after its passage, or the claims shall be forever barred. The latter act not only requires that all claims shall be put in suit within three years after its passage (sec. 6) or be barred, but there is a further provision that no suit shall be maintained for any depredation thereafter committed. The acts will therefore remain in force outside of this section, without repeal, until all pending cases are finally disposed of, when they will become obsolete. See paragraph "Twentieth," section 24.

POWER OF CONGRESS OVER COURT.

"The United States cannot be sued in their courts without their consent, and in granting such consent Congress has an absolute discretion to specify the cases and contingencies in which the liability of the Government is submitted to the courts for judicial determination. Beyond the letter of such consent, the courts may not go, no matter how beneficial they may deem or in fact might be their possession of a larger jurisdiction over the liabilities of the Government." Schillinger *v.* U. S., 155 U. S., 166. And the Government "may withdraw its consent whenever it may suppose that justice to the public requires it." U. S. *v.* Lee., 106 U. S., 227.

SCOPE OF JURISDICTION.

First. "The first section of the Tucker act evidently contemplates four distinct classes of cases: (1) those founded upon the Constitution or any law of Congress; (2) cases founded upon a regulation of an executive department; (3) cases of contract, express or implied, with the government; (4) actions for damages, liquidated or unliquidated, in cases *not sounding in tort*. The words 'not sounding in tort' are in terms referable only to the fourth class of cases." United States *v.* Lynah, 188 U. S., 475.

(1) The impairment of the value of property by the acts of the Government does not support a claim founded on the Constitution Peabody *v.* U. S., 46 Ct. Cl., 39. Claims founded on a law of Congress are cognizable regardless of their origin in contract or tort. Christie-Street Com. Co. *v.* U. S., 126 Fed., 991. See also Foster *v.* U. S., 32 Ct. Cl., 170.

(2) This has reference to the Rules and Regulations made by the head of a Government Department for the conduct thereof. Harvey *v.* U. S., 3 Ct. Cl., 38. Within the lawful discretion of the head of the department. Maddux *v.* U. S., 20 Ct. Cl., 199.

(3) To give the Court of Claims jurisdiction under this section, "the demand sued upon must be founded on a convention between the parties—a coming together of minds." Russell *v.* U. S., 182 U. S., 530. Contracts or obligations will not be implied from a tort. Harley *v.* U. S., 198 U. S., 229, 234. Implied contracts do not arise from the denials and contentions of the parties. Knapp *v.* U. S., 46 Ct. Cl., 601. But a contract may be implied where officials of the Government, acting under authority of Congress, take property for a public use. U. S. *v.* Great Falls Mfg. Co., 112 U. S., 656. See also Knote *v.* U. S., 95 U. S., 149.

(4) "The language of the statutes which confer jurisdiction upon the Court of Claims, excludes by the strongest implication demands against the Government founded on torts." Schillinger *v.* U. S., 155 U. S., 167. "The court has steadily adhered to the general rule that, without its consent given in some act of Congress, the Government is not liable to be sued for the torts, misconduct, misfeasances or laches of its officers or employees." Bigby *v.* U. S., 188 U. S., 407. See Alexander *v.* U. S., 39 Ct. Cl., 383; Luddington *v.* U. S., 15 Ct. Cl., 453.

Second. Demands on the part of the United States. Allen *v.* U. S., 17 Wall., 207; Taggart *v.* U. S., 17 Ct. Cl., 322; Hart *v.* U. S., 118 U. S., 62; Wisconsin Cent. R. Co. *v.* U. S., 164 U. S., 190.

Third. Claim of paymaster or other disbursing officer. Hobbs *v.* U. S., 17 Ct. Cl., 189. Wood *v.* U. S., 25 Ct. Cl., 98. A collector of internal revenue is not a

"disbursing officer." Stapps Case, 4 Ct. Cl., 219. That relief depends upon the circumstances of each case, see Clark *v.* U. S., 46 Ct. Cl., 416.

The jurisdiction of the Court of Claims extends throughout the United States. "It issues writs to every part of the United States, and is specially authorized to enforce them." U. S. *v.* Borcherling, 185 U. S., 234. See also Sykes *v.* U. S., 9 Ct. Cl., 330.

Judgments for set-off or counterclaim, how enforced.

R. S., s. 1061.

Finality of judgment.

SEC. 146. Upon the trial of any cause in which any set-off, counterclaim, claim for damages, or other demand is set up on the part of the Government against any person making claim against the Government in said court, the court shall hear and determine such claim or demand both for and against the Government and claimant; and if upon the whole case it finds that the claimant is indebted to the Government it shall render judgment to that effect, and such judgment shall be final, with the right of appeal, as in other cases provided for by law. Any transcript of such judgment, filed in the clerk's office of any district court, shall be entered upon the records thereof, and shall thereby become and be a judgment of such court and be enforced as other judgments in such court are enforced. (*36 Stat. L., 1137.*)

As the Circuit Courts are abolished by section 289 of this Code, reference thereto has been omitted from this section. No other change was made.

That the set-off or counterclaim need not be pleaded, see Wisconsin Central R. Co. *v.* U. S., 164 U. S., 212. If the claim is dismissed for want of jurisdiction, the counterclaim is also dismissed. B. & O. R. Co. *v.* U. S., 34 Ct. Cl. 484. In McElrath *v.* U. S., 102 U. S., 446, the Supreme Court said: "Congress, by the act in question, informs the claimant that if he avails himself of the privilege of suing the government in the special court organized for that purpose, he may be met with a set-off, counterclaim, or other demand of the Government, upon which the judgment may go against him, without the intervention of a jury, if the court, upon the whole case, is of opinion that the Government is entitled to such judgment. If the claimant avails himself of this privilege he must do so subject to the conditions annexed by the Government to the exercise of the privilege." See also Huske *v.* U. S., 46 Ct. Cl., 35.

Decree on accounts of disbursing officers.

R. S., s. 1062.

SEC. 147. Whenever the Court of Claims ascertains the facts of any loss by any paymaster, quartermaster, commissary of subsistence, or other disbursing officer, in the cases hereinbefore provided, to have been without fault or negligence on the part of such officer, it shall make a decree setting forth the amount thereof, and upon such decree the proper accounting officers of the Treasury shall allow to such officer the amount so decreed as a credit in the settlement of his accounts. (*36 Stat. L., 1137.*)

This section is a reenactment of what was existing law.

In Malone's case, 5 Ct. Cl., 46, it was said that the effective words of this section are fault or neglect, and must be taken in their common and popular signification, the former importing "error or mistake," the latter "omission, forbearance to do anything that can be done or that requires to be done; that the law required no impossibilities, and that the degree of diligence exercised must be fixed in the light of the circumstances that surround each case and the nature of the service required." See also Martin *v.* U. S., 37 Ct. Cl., 531; Clark *v.* U. S., 46 Ct. Cl., 416. Relief was granted for loss by theft in Glenn's Case, 4 Ct. Cl., 501. From highway robbery in the case of Wood *v.* U. S., 25 Ct. Cl., 98. For accidental losses in Hoyle *v.* U. S., 21 Ct. Cl., 300; Smith's Case, 14 Ct. Cl., 114.

Claims referred by departments.

R. S., s. 1063.

3 Mar., 1883, 22 Stat. L., 485, c. 116, s. 2; 1 Supp., 463.

3 Mar., 1887, 24 Stat. L., 507, c. 359, ss. 12, 13; 1 Supp., 562.

Findings.

SEC. 148. When any claim or matter is pending in any of the executive departments which involves controverted questions of fact or law, the head of such department may transmit the same, with the vouchers, papers, documents and proofs pertaining thereto, to the Court of Claims and the same shall be there proceeded in under such rules as the court may adopt. When the facts and conclusions of law shall have been found, the court shall report its findings to the department by which it was transmitted for its guidance and action: *Provided, however*, That if it shall have been transmitted with the consent of the claimant, or if it shall appear to the satisfaction of the court upon the facts established, that under existing

laws or the provisions of this chapter it has jurisdiction to render judgment or decree thereon, it shall proceed to do so, in the latter case giving to either party such further opportunity for hearing as in its judgment justice shall require, and shall report its findings therein to the department by which the same was referred to said court. The Secretary of the Treasury may, upon the certificate of any auditor, or of the Comptroller of the Treasury, direct any claim or matter, of which, by reason of the subject matter or character, the said court might, under existing laws, take jurisdiction on the voluntary action of the claimant, to be transmitted, with all the vouchers, papers, documents, and proofs pertaining thereto, to the said court for trial and adjudication. (*36 Stat. L., 1137.*)

Judgment and further hearing.

Matters transmitted from departments.

Except for the insertion of the words "of the" before the word "Comptroller," to supply an omission in the text, this section states what was existing law.

PENDENCY OF CLAIM NECESSARY.

In the case of Armstrong *v.* U. S., 29 Ct. Cl., 168, it was said that "it is only the pendency of a claim or matter in an executive department that gives the head of such department jurisdiction to transmit the same to the court." The rights of conflicting claimants must be adjudicated by the court. Borcherling *v.* U. S., 35 Ct. Cl., 342. But the court can not take cognizance of a case already adjudicated. B. & O. R. Co. *v.* U. S., 34 Ct. Cl., 484. *Ex parte* affidavits transmitted with the claim can not be considered as evidence. Chickasaw Nation *v.* U. S., 19 Ct. Cl., 133.

"STALE CLAIMS."

That "stale" claims can not be transmitted under this section, see Waddell *v.* U. S., 25 Ct. Cl., 323, where the court said: "When a claim is transmitted by the head of an executive department, * * * the court is to determine the law applicable to the case in such department, and not necessarily what the law would be upon the same claim if commenced by voluntary petition filed under the statutes conferring jurisdiction upon the court to enter judgment."

JUDGMENTS.

On the power of the Court of Claims to render final judgment on cases transmitted for its "guidance and action," see U. S. *v.* New York, 160 U. S., 615. On the question of the finality of the findings of fact and conclusions of law respecting claims transmitted to the Court, see In re Sanborn, 148 U. S., 226; Berger *v.* U. S., 36 Ct. Cl., 243.

SEC. 149. All cases transmitted by the head of any department, or upon the certificate of any Auditor, or of the Comptroller of the Treasury, according to the provisions of the preceding section, shall be proceeded in as other cases pending in the Court of Claims, and shall, in all respects, be subject to the same rules and regulations. (*36 Stat. L., 1138.*)

Procedure in cases transmitted by departments.

R. S., s. 1064.

This section states what was existing law except for the insertion of the words "of the" before the word "Comptroller" and the words "of the Treasury" after that word.

In United States *v.* O'Grady, 22 Wall., 647, the Supreme Court said that the judgments of the Court of Claims, where no appeal is taken, are absolutely conclusive of the rights of the parties. In Balmer *v.* U. S., 26 Ct. Cl., 82, it was said: "The finding of facts has the finality of a verdict, and the judgment, unappealed, is absolutely conclusive upon both parties, and is the constitutional, judicial determination of a legal right. Such judgments are the end of controversy, and can not be reviewed in Congress nor in the executive departments nor anywhere save in the Supreme Court."

SEC. 150. The amount of any final judgment or decree rendered in favor of the claimant, in any case transmitted to the Court of Claims under the two preceding sections, shall be paid out of any specific appropriation applicable to the case, if any such there be; and where no such appropriation exists, the judgment or decree shall be paid in the same manner as other judgments of the said court. (*36 Stat. L., 1138.*)

Judgments in cases transmitted by departments, how paid.

R. S., s. 1065.

This section is a reenactment, without change, of what was existing law.

Either House of Congress may refer claims to court.

3 Mar., 1883, 22 Stat. L., 485, c. 116, s. 1; 1 Supp., 403. 3 Mar., 1887, 24 Stat. L., 507, c. 359, s. 14; 1 Supp., 562. 25 June, 1910, 36 Stat. L., 837, c. 409.

SEC. 151. Whenever any bill, except for a pension, is pending in either House of Congress providing for the payment of a claim against the United States, legal or equitable, or for a grant, gift, or bounty to any person, the House in which such bill is pending may, for the investigation and determination of facts, refer the same to the Court of Claims, which shall proceed with the same in accordance with such rules as it may adopt and report to such House the facts in the case and the amount, where the same can be liquidated, including any facts bearing upon the question whether there has been delay or laches in presenting such claim or applying for such grant, gift, or bounty, and any facts bearing upon the question whether the bar of any statute of limitation should be removed or which shall be claimed to excuse the claimant for not having resorted to any established legal remedy, together with such conclusions as shall be sufficient to inform Congress of the nature and character of the demand, either as a claim, legal or equitable, or as a gratuity against the United States, and the amount, if any, legally or equitably due from the United States to the claimant: *Provided, however*, That if it shall appear to the satisfaction of the court upon the facts established, that under existing laws or the provisions of this chapter, the subject matter of the bill is such that it has jurisdiction to render judgment or decree thereon, it shall proceed to do so, giving to either party such further opportunity for hearing as in its judgment justice shall require, and it shall report its proceedings therein to the House of Congress by which the same was referred to said court. (*36 Stat. L., 1138.*)

Report of facts, laches, etc.

Conclusions.

Further hearings.

This section is a reenactment of section 14 of the so-called Tucker Act, as amended by the act of June 25, 1910, no material changes being made.

On the nature of jurisdiction conferred by this section, see Dowdy *v.* U. S., 26 Ct. Cl., 220. That the report to Congress does not determine a legal right, nor relieve the claimant from the consequence of his laches, see Balmer *v.* U. S., 26 Ct. Cl., 82. In Brandon *v.* U. S., 46 Ct. Cl., 570, it is said: "The only office section 14 of the act of 1887 performs is the transmission by either House of Congress of a pending bill 'providing for the payment of a claim against the United States, legal or equitable, or for a grant, gift or bounty,' and, therefore, where there has been legislation defining such claims, fixing the limit of the liability of the Government and the time within which they shall be prosecuted, the court must of necessity, in determining the facts respecting such claim, consider such statutes; otherwise there would be no basis for such claims." Loyalty is not a jurisdictional requirement under this section, but the court may find the fact of loyalty or disloyalty at the request of either party for the consideration of Congress. Hunt *v.* U. S., 45 Ct. Cl., 566.

Costs may be allowed prevailing party.

3 Mar., 1887, 24 Stat. L., 508, c. 359, s. 15; 1 Supp., 562.

SEC. 152. If the Government of the United States shall put in issue the right of the plaintiff to recover, the court may, in its discretion, allow costs to the prevailing party from the time of joining such issue. Such costs, however, shall include only what is actually incurred for witnesses, and for summoning the same, and fees paid to the clerk of the court. (*36 Stat. L., 1138.*)

This section was drawn from section 15 of the Tucker Act and states what was existing law.

Costs were awarded against the United States on account of the "frivolous and vexatious nature of the objections taken to the greater part" of the claim in U. S. *v.* Harmon, 147 U. S., 268. See further Jacobus *v.* U. S., 87 Fed., 89; Abbott *v.* U. S., 72 Fed., 686.

Claims growing out of treaties not cognizable therein.

R. S., s. 1066.

SEC. 153. The jurisdiction of the said court shall not extend to any claim against the Government not pending therein on December first, eighteen hundred and sixty-two, growing out of or dependent on any treaty stipulation entered into with foreign nations or with the Indian tribes. (*36 Stat. L., 1138.*)

The only change made in this section consists in the substitution of the word "first" after the word "December," for the word "one."

RELATION BETWEEN TREATY AND CLAIM.

In United States *v.* Weld, 127 U. S., 57, the Supreme Court said: "In our view of the case, the statute contemplates a *direct* and *proximate* connection between the treaty and the claim, in order to bring such claim within the class excluded from the jurisdiction of the Court of Claims by section 1066, Rev. Stat. In order to make the claim one arising out of a treaty" within the meaning of this section, "the *right* itself, which the petition makes to be the foundation of the claim, must have its origin—derive its life and existence—from some treaty stipulation." See also Australasia & China Tel. Co. *v.* U. S., 46 Ct. Cl., 651. As to the limitations of special legislation over claims excluded by this section, see Ex parte Atocha, 17 Wall., 439.

Claims pending in other courts.
R. S., s. 1067.

SEC. 154. No person shall file or prosecute in the Court of Claims, or in the Supreme Court on appeal therefrom, any claim for or in respect to which he or any assignee of his has pending in any other court any suit or process against any person who, at the time when the cause of action alleged in such suit or process arose, was, in respect thereto, acting or professing to act, mediately or immediately, under the authority of the United States. (*36 Stat. L., 1138.*)

This section states what was the existing law.

Aliens.
R. S., s. 1068.

SEC. 155. Aliens who are citizens or subjects of any government which accords to citizens of the United States the right to prosecute claims against such government in its courts, shall have the privilege of prosecuting claims against the United States in the Court of Claims, whereof such court, by reason of their subject-matter and character, might take jurisdiction. (*36 Stat. L., 1139.*)

This section made no change in the existing law.

FOREIGN REMEDY NEED NOT BE THE SAME.

In U. S. *v.* O'Keefe, 11 Wall., 178, the Supreme Court held that by the "petition of right" the British Government secured to American citizens the right to prosecute their claims against it. The court said: "If the mode of proceeding to enforce it be formal and ceremonious, it is nevertheless a practical and efficient remedy for the invasion by the sovereign power of individual rights. Indeed, it is not less practical and efficient than a suit in the Court of Claims. And in one important particular the two proceedings are alike, for both end with the recovery of judgments."

ALIENS EXCLUDED.

In Collie's case, 12 Ct. Cl., 687, it was said: "Those aliens who are citizens or subjects of a government which accords to citizens of the United States the right to prosecute claims against such government in its own courts are the only aliens who, under any circumstances, have the privilege of prosecuting claims in this court."

All claims to be filed within six years; exceptions.
R. S., s. 1069.

SEC. 156. Every claim against the United States cognizable by the Court of Claims, shall be forever barred unless the petition setting forth a statement thereof is filed in the court, or transmitted to it by the Secretary of the Senate or the Clerk of the House of Representatives, as provided by law, within six years after the claim first accrues: *Provided*, That the claims of married women, first accrued during marriage, of persons under the age of twenty-one years, first accrued during minority, and of idiots, lunatics, insane persons, and persons beyond the seas at the time the claim accrued, entitled to the claim, shall not be barred if the petition be filed in the court or transmitted, as aforesaid, within three years after the disability has ceased; but no other disability than those enumerated shall prevent any claim from being barred, nor shall any of the said disabilities operate cumulatively. (*36 Stat. L., 1139.*)

Claims of married women, minors, etc.

In United States *v.* Greathouse (166 U. S., 601), the Supreme Court held that the Tucker Act of March 3, 1887 (24 Stat., 505), did not repeal that provision of section 1069, Revised Statutes, which permits persons under dis-

ability to bring suit on any claim against the United States within three years after the disability has ceased. The section therefore states what was existing law.

Similar provisions occur in paragraph "Twentieth" of section 24.

WHEN CLAIM ACCRUES.

"A claim first accrues, within the meaning of the statute, when a suit may first be brought upon it, and from that day the six years' limitation begins to run." Rice *v.* U. S., 122 U. S., 617. "The suspension is only in favor of those laboring under the specified disabilities at the time the claim accrued." De Arnaud *v.* U. S., 151 U. S., 406.

SECTION JURISDICTIONAL.

The section is "not merely a statute of limitations but also jurisdictional in its nature, and limiting the cases of which the Court of Claims can take cognizance." U. S. *v.* Wardwell, 172 U. S., 52. Claims referred by either House of Congress are covered by this section. Ford *v.* U. S., 116 U. S., 213. And it was held to apply to the claim of an Army paymaster to recover the amount paid by him on account of funds stolen from him. U. S. *v.* Smith, 105 U. S., 620.

Rules of practice; may punish contempts.

R. S., s. 1070.

SEC. 157. The said court shall have power to establish rules for its government and for the regulation of practice therein, and it may punish for contempt in the manner prescribed by the common law, may appoint commissioners, and may exercise such powers as are necessary to carry into effect the powers granted to it by law. (*36 Stat. L., 1139.*)

This section is a reenactment, without change, of what was existing law.

In sustaining the power of the Court of Claims to appoint commissioners, the Supreme Court said: "We see no reason why it may not use such machinery as courts of more general jurisdiction are accustomed to employ under similar circumstances to aid their investigations." Intermingled Cotton Cases, 92 U. S., 654. See notes to Sec. 268, p. 138.

Oaths and acknowledgments.

R. S., s. 1071.

SEC. 158. The judges and clerks of said court may administer oaths and affirmations, take acknowledgments of instruments in writing, and give certificates of the same. (*36 Stat. L., 1139.*)

This section made no change in the law.

Petition and verification.

R. S., s. 1072.

Assignment.

Allegiance.

Verification.

SEC. 159. The claimant shall in all cases fully set forth in his petition the claim, the action thereon in Congress or by any of the Departments, if such action has been had, what persons are owners thereof or interested therein, when and upon what consideration such persons became so interested; that no assignment or transfer of said claim or of any part thereof or interest therein has been made, except as stated in the petition; that said claimant is justly entitled to the amount therein claimed from the United States after allowing all just credits and offsets; that the claimant and, where the claim has been assigned, the original and every prior owner thereof, if a citizen, has at all times borne true allegiance to the Government of the United States, and, whether a citizen or not, has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government, and that he believes the facts as stated in the said petition to be true. The said petition shall be verified by the affidavit of the claimant, his agent or attorney. (*36 Stat. L., 1139.*)

This section is a reenactment, without material change, of what was existing law.

FORMS OF PLEADING.

"The forms of pleading in this court are not of so strict a character as to preclude, even in cases where judgment can be rendered, such judgment as the facts demand. A plain statement of facts is all that is necessary." Atlantic Works *v.* U. S., 46 Ct. Cl., 61. But the rules and practice of the court are strict in matters of jurisdiction. Murray *v.* U. S. & Comanche Indians, 46 Ct. Cl., 94.

Averment of allegiance, etc., is no longer required in view of the amnesty proclamation of December 25, 1868. Armstrong *v.* U. S., 13 Wall., 154; Austin *v.* U. S., 155 U. S., 417. That verification of the petition is not a jurisdictional requirement and may be done at any time, see Griffin's Case, 13 Ct. Cl., 257.

Petition dismissed, when.

SEC. 160. The said allegations as to true allegiance and voluntary aiding, abetting, or giving encouragement to rebellion against the Government may be traversed by the Government, and if on the trial such issues shall be decided against the claimant, his petition shall be dismissed. (*36 Stat. L., 1139.*)

R. S., s. 1073.

No change in existing law was made by this section.

Burden of proof and evidence as to loyalty.

SEC. 161. Whenever it is material in any claim to ascertain whether any person did or did not give any aid or comfort to forces or government of the late Confederate States during the Civil War, the claimant asserting the loyalty of any such person to the United States during such Civil War shall be required to prove affirmatively that such person did, during said Civil War, consistently adhere to the United States and did give no aid or comfort to persons engaged in said Confederate service in said Civil War. (*36 Stat. L., 1139.*)

R. S., s. 1074.

Except for the substitution of the words "Civil War" for the word "rebellion," the insertion of the words "Confederate States" and "service," and the elimination of the provision making certain facts prima facie evidence of disloyalty, this section states what was existing law.

"The establishment of loyalty in fact, as contradistinguished from innocence in law produced by pardon," is a prerequisite to jurisdiction. Austin *v.* U. S., 155 U. S., 417. As to the interpretation of the word "loyalty," see Watson *v.* U. S., 25 Ct. Cl., 116; Hall *v.* U. S., 27 Ct. Cl., 438

Claims for proceeds arising from sales of abandoned property.

SEC. 162. The Court of Claims shall have jurisdiction to hear and determine the claims of those whose property was taken subsequent to June the first, eighteen hundred and sixty-five, under the provisions of the Act of Congress approved March twelfth, eighteen hundred and sixty-three, entitled "An Act to provide for the collection of abandoned property and for the prevention of frauds in insurrectionary districts within the United States," and Acts amendatory thereof where the property so taken was sold and the net proceeds thereof were placed in the Treasury of the United States; and the Secretary of the Treasury shall return said net proceeds to the owners thereof, on the judgment of said court, and full jurisdiction is given to said court to adjudge said claims, any statutes of limitations to the contrary notwithstanding. (*36 Stat. L., 1139.*)

Return of proceeds.

This section is new legislation. See Congressional Record, 61st Congress, 3rd session, p. 2163.

Construing this section, the Court of Claims has said: "Thus, as to property captured, sold, and the proceeds paid into the Treasury subsequent to June 1, 1865—after the cessation of active hostilities—Congress have revived and applied the act of March 12, 1863, and given the court jurisdiction to hear and determine such claims thereunder; but the jurisdiction given does not extend to the present claim, shown by the petition to have originated from the capture and sale of cotton in 1863. If Congress had desired the court to inquire into claims accruing prior to June 1, 1865, they had only to include them in the act of March 3, 1911, as they did those accruing subsequent thereto. The inaction of Congress in this respect is significant, as both classes of claims, respecting their right of reference under the Tucker Act, stood on equal terms. * * * The money arising from the proceeds of cotton in the Treasury can not be paid out without the consent of Congress. Hence no rights are lost by the action of the court; and in the absence of some definite legislation authorizing the court to apportion the fund in the Treasury among the rightful claimants we are without authority to further proceed." Brandon *v.* U. S., 46 Ct. Cl., 573.

Commissioners to take testimony.

SEC. 163. The Court of Claims shall have power to appoint commissioners to take testimony to be used in the investigation of claims which come before it, to prescribe the fees which they shall receive for their services, and to issue commissions for the taking of such testimony, whether taken at the instance of the claimant or of the United States. (*36 Stat. L., 1140.*)

R. S., s. 1075.

This section made no change in existing law.

Power to call upon departments for information.

SEC. 164. The said court shall have power to call upon any of the Departments for any information or papers it may deem necessary, and shall have the use of all recorded and printed reports made by

R. S., s. 1076.

Discretion of department.

the committees of each House of Congress, when deemed necessary in the prosecution of its business. But the head of any Department may refuse and omit to comply with any call for information or papers when, in his opinion, such compliance would be injurious to the public interest. (*36 Stat. L., 1140.*)

This section states what was existing law.

"Calls upon the departments from this court under R. S. sec. 1076, are for information or papers, and not for acknowledgments or promises, and the replies which are made, whatever may be their terms, cannot admit away or waive any valid defense of the United States to a claim, nor create a cause of action for a claimant which did not exist before." Leonard *v.* U. S., 18 Ct. Cl., 382. The call upon the department under this section is in the nature of a subpœna *duces tecum*. In re Calls for Evidence, 33 Ct. Cl., 354. The right of the claimant to the "information or papers" is a qualified and not an absolute right. Woolverton *v.* U. S., 26 Ct. Cl., 215.

When testimony not to be taken.

R. S., s. 1077.

SEC. 165. When it appears to the court in any case that the facts set forth in the petition of the claimant do not furnish any ground for relief, it shall not authorize the taking of any testimony therein. (*36 Stat. L., 1140.*)

In this section the words "be the duty of the court to" are omitted, the effect being to prohibit the court from authorizing the taking of testimony when the petition of the claimant does not furnish any ground for relief.

Examination of claimant.

R. S., s. 1080.

SEC. 166. The court may, at the instance of the attorney or solicitor appearing in behalf of the United States, make an order in any case pending therein, directing any claimant in such case to appear, upon reasonable notice, before any commissioner of the court and be examined on oath touching any or all matters pertaining to said claim. Such examination shall be reduced to writing by the said commissioner, and be returned to and filed in the court, and may, at the discretion of the attorney or solicitor of the United States appearing in the case, be read and used as evidence on the trial thereof. And if any claimant, after such order is made and due and reasonable notice thereof is given to him, fails to appear, or refuses to testify or answer fully as to all matters within his knowledge material to the issue, the court may, in its discretion, order that the said cause shall not be brought forward for trial until he shall have fully complied with the order of the court in the premises. (*36 Stat. L., 1140.*)

Return of examination.

Action on failure to testify.

This section made no change in the law.

The examination provided for in this section extends only to the claimant. Macauley's Case, 11 Ct. Cl., 575. The granting or refusal of the application for an order is within the discretion of the court. Truitt *v.* U. S., 30 Ct. Cl., 19. The section applies to corporation claimants. Atchison R. Motion, 15 Ct. Cl., 1. That this section recognizes the constitutional guaranties of the citizen to refuse to answer where by so doing he may expose himself to criminal prosecution, and that the power of the court is limited thereby, see Globe Works *v.* U. S., 45 Ct Cl., 497.

Testimony, where taken.

R. S., s. 1081.

SEC. 167. The testimony in cases pending before the Court of Claims shall be taken in the county where the witness resides, when the same can be conveniently done. (*36 Stat. L., 1140.*)

This section made no change in the law.

Witnesses before commissioners.

R. S., s. 1082.

Subpœnas.

SEC. 168. The Court of Claims may issue subpœnas to require the attendance of witnesses in order to be examined before any person commissioned to take testimony therein. Such subpœnas shall have the same force as if issued from a district court, and compliance therewith shall be compelled under such rules and orders as the court shall establish. (*36 Stat. L., 1140.*)

This section made no material change in the law.

"The Court of Claims is a court of general territorial jurisdiction—"a court of the United States for the United States, and for no particular State or district. Its jurisdiction is as great and as limited elsewhere as here and here as elsewhere." Sykes *v.* U. S., 9 Ct. Cl., 332. "It issues writs to every part of the United States, and is specially authorized to enforce them." U. S. *v.* Borcherling, 185 U. S., 234.

Cross-examination.

R. S., s. 1083.

SEC. 169. In taking testimony to be used in support of any claim, opportunity shall be given to the United States to file interrogatories, or by attorney to examine witnesses, under such regulations as said court shall prescribe; and like opportunity shall be afforded the claimant, in cases where testimony is taken on behalf of the United States, under like regulations. (*36 Stat. L., 1140.*)

This section made no change in the law.

Ex parte affidavits transmitted with a claim are incompetent as evidence. Smith *v.* U. S., 19 Ct. Cl., 690.

Witnesses, how sworn.

R. S., s. 1084.

SEC. 170. The commissioner taking testimony to be used in the Court of Claims shall administer an oath or affirmation to the witness brought before him for examination. (*36 Stat. L., 1140.*)

This section is a reenactment of existing law.

Fees of commissioners, by whom paid.

R. S., s. 1085.

SEC. 171. When testimony is taken for the claimant, the fees of the commissioner before whom it is taken, and the cost of the commission and notice, shall be paid by such claimant; and when it is taken at the instance of the Government, such fees shall be paid out of the contingent fund provided for the Court of Claims, or other appropriation made by Congress for that purpose. (*36 Stat. L., 1141.*)

The words "together with all postage incurred by the Assistant Attorney General" are omitted as obsolete, as all such business is entitled to be sent through the mails under the official frank of the Department. With this exception the section states what was existing law.

Claims forfeited for fraud.

R. S., s. 1086.

Judgment.

SEC. 172. Any person who corruptly practices or attempts to practice any fraud against the United States in the proof, statement, establishment, or allowance of any claim or of any part of any claim against the United States shall, ipso facto, forfeit the same to the Government; and it shall be the duty of the Court of Claims, in such cases, to find specifically that such fraud was practiced or attempted to be practiced, and thereupon to give judgment that such claim is forfeited to the Government, and that the claimant be forever barred from prosecuting the same. (*36 Stat. L., 1141.*)

This section made no change in the law.

The whole claim may be vitiated and forfeited by fraud in a part thereof. Furay *v.* U. S., 34 Ct. Cl., 171. The section must be rigidly enforced to protect the Government against the payment of false and fraudulent claims. Terrill *v.* U. S., 35 Ct. Cl., 218. That the burden of proving the fraud alleged is on the Government, and that "forfeiture can be decreed in no cause without proof satisfactory to the court that fraud or an attempt to commit fraud appears to have been established," see Globe Works *v.* U. S., 45 Ct. Cl., 497, 508.

Claims under act of June 16, 1874.

30 Apr., 1878, 20 Stat. L., 524, c. 77, s. 2; 1 Supp., 159.

Excessive claims.

SEC. 173. No claim shall be allowed by the accounting officers under the provisions of the act of Congress approved June sixteenth, eighteen hundred and seventy-four, or by the Court of Claims, or by Congress, to any person where such claimant, or those under whom he claims, shall willfully, knowingly, and with intent to defraud the United States, have claimed more than was justly due in respect of such claim, or presented any false evidence to Congress, or to any department or court, in support thereof. (*36 Stat. L., 1141.*)

Except for the omission of the word "hereafter" in the first line of the section, no change was made.

New trial on motion of claimant.

R. S., s. 1087.

SEC. 174. When judgment is rendered against any claimant, the court may grant a new trial for any reason which, by the rules of common law or chancery in suits between individuals, would furnish sufficient ground for granting a new trial. (*36 Stat. L., 1141.*)

This section made no change in the law.

"In the application of the statute the court has adopted rules on the subject of new trials conforming in substance to the common-law requisites of a new trial." Nance *v.* U. S., 23 Ct. Cl., 463.

See notes to section 269, p. 139.

New trial on motion of United States.

R. S., s. 1088.

SEC. 175. The Court of Claims, at any time while any claim is pending before it, or on appeal from it, or within two years next after the final disposition of such claim, may, on motion, on behalf of the United States, grant a new trial and stay the payment of any judgment therein, upon such evidence, cumulative or otherwise, as shall satisfy the court that any fraud, wrong, or injustice in the premises has been done to the United States; but until an order is made staying the payment of a judgment, the same shall be payable and paid as now provided by law. (*36 Stat. L., 1141.*)

This section made no change in the law.

Under this section the United States may file a motion for a new trial at any time within the two years after the final disposition of the claim. The provision in this section "is a limitation of the time for filing the motion and not a limitation of the time for making a decision, if the motion has been filed within the two years." Sanderson *v.* U. S., 210 U. S., 168, holding that this section is applicable to the Indian Depredation act of 1891. The Court of Claims has power to grant a new trial on motion of the United States at a term subsequent to that at which the judgment was rendered, and a mandate from the Supreme Court does not interfere with the exercise of that power. Belknap *v.* U. S., 150 U. S., 588.

Fraud, etc. This section does not authorize a motion for new trial on error of law. In so holding the Supreme Court said: "It seems to us clear that the relief contemplated by section 1088 was in respect of matters of fact whereby some fraud, wrong or injustice had been done to defendants." In re District of Columbia, 180 U. S., 250. As to what is sufficient evidence to establish fraud or injustice, see Ford *v.* U. S., 18 Ct. Cl., 62; Gorham *v.* U. S., 29 Ct. Cl., 97.

That a motion to amend the findings may be considered as a motion for a new trial, see Plumley *v.* U. S., 45 Ct. Cl., 185.

Cost of printing record.

3 Mar., 1877, 19 Stat. L., 344, c. 105; 1 Supp., 136.

SEC. 176. There shall be taxed against the losing party in each and every cause pending in the Court of Claims the cost of printing the record in such case, which shall be collected, except when the judgment is against the United States, by the clerk of said court and paid into the Treasury of the United States. (*36 Stat. L., 1141.*)

This section is so modified as to apply to the taxing of costs and the printing of records in the Court of Claims. In so far as the law from which the section is drawn applies to the Supreme Court, it has been revised in section 254 of this code.

No interest on claims.

R. S., s. 1091.

SEC. 177. No interest shall be allowed on any claim up to the time of the rendition of judgment thereon by the Court of Claims, unless upon a contract expressly stipulating for the payment of interest. (*36 Stat. L., 1141.*)

This section made no change in the law.

For illustrative cases under this section, see U. S. *v.* Cherokee Nation. 202 U. S., 101; U. S. *v.* Blackfeather, 155 U. S., 180; U. S. *v.* McKee, 91 U. S., 442; in which cases interest was allowed.

Interest was not allowed in U. S. *v.* Sargent, 162 Fed., 81; Harvey *v.* U. S., 113 U. S., 243; Tilson *v.* U. S., 100 U. S., 43. In Rice *v.* U. S., 122 U. S., 620, it was said that this section has always been applied to cases under special acts and to those under the captured or abandoned property act.

Effect of payment of judgment.

R. S., s. 1092.

SEC. 178. The payment of the amount due by any judgment of the Court of Claims, and of any interest thereon allowed by law, as provided by law, shall be a full discharge to the United States of all claim and demand touching any of the matters involved in the controversy. (*36 Stat. L., 1141.*)

This section made no change in the law.

A claim cannot be reconsidered by the court after an appropriation has been made by Congress and payment accepted by the claimant. Pilkington *v.* U. S. 36 Ct. Cl., 357. And payment of a judgment is a bar to a motion to set aside or vacate the judgment and grant a new trial. Vaughn *v.* U. S., 34 Ct. Cl., 342. See also U. S. *v.* Frerichs, 124 U. S., 320.

Final judgments a bar.

R. S., s. 1093.

SEC. 179. Any final judgment against the claimant on any claim prosecuted as provided in this chapter shall forever bar any further claim or demand against the United States arising out of the matters involved in the controversy. (*36 Stat. L., 1141.*)

This section is a reenactment of existing law.

FINALITY OF JUDGMENT.

"The judgment of the Court of Claims, from which no appeal is taken, is just as conclusive under existing laws as the judgment of the Supreme Court, until it is set aside on a motion for a new trial." U. S. *v.* O'Grady, 22 Wall., 648. That dismissal for want of jurisdiction is not a final judgment, see Green *v.* U. S., 18 Ct. Cl., 93. As to statute of limitations, see Battelle *v.* U. S., 21 Ct. Cl., 250.

Debtors to the United States may have amount due ascertained.

3 Mar., 1887, 24 Stat. L., 505, c. 359, s. 3; 1 Supp., 560.

SEC. 180. Whenever any person shall present his petition to the Court of Claims alleging that he is or has been indebted to the United States as an officer or agent thereof, or by virtue of any contract therewith, or that he is the guarantor, or surety, or personal representative of any officer or agent or contractor so indebted, or that he or the person for whom he is such surety, guarantor, or personal representative has held any office or agency under the United States, or entered into any contract therewith, under which it may be or has been claimed that an indebtedness to the United States had arisen and exists, and that he or the person he represents has applied to the proper department of the Government requesting that the account of such office, agency, or indebtedness may be adjusted and settled, and that three years have elapsed from the date of such application, and said account still remains unsettled and unadjusted, and that no suit upon the same has been brought by the United States, said court shall, due notice first being given to the head of said department and to the Attorney-General of the United States, proceed to hear the parties and to ascertain the amount, if any, due the United States on said account. The Attorney-General shall represent the United States at the hearing of said cause. The court may postpone the same from time to time whenever justice shall require. The judgment of said court or of the Supreme Court of the United States, to which an appeal shall lie, as in other cases, as to the amount due, shall be binding and conclusive upon the parties. The payment of such amount so found due by the court shall discharge such obligation. An action shall accrue to the United States against such principal, or surety, or representative to recover the amount so found due, which may be brought at any time within three years after the final judgment of said court; and unless suit shall be brought within said time, such claim and the claim on the original indebtedness shall be forever barred. The provisions of section one hundred and sixty-six shall apply to cases under this section. (*36 Stat. L., 1141.*)

Accounts unsettled.

Notice.

Judgment conclusive.

Action barred after 3 years.

Examinations.

This section is drawn from sections 3 and 8 of the so-called Tucker Act, the last sentence being derived from section 8, which makes applicable to suits brought under the act the provisions of section 1080, Revised Statutes, revised as section 166 of this code. Except for the change of language in the last sentence for purposes of revision, the section states what was existing law.

The petition provided for in this section must allege that the petitioner is or has been indebted to the United States. Gerding *v.* U. S., 26 Ct. Cl., 319.

Appeals or writs of error.

3 Mar., 1887, 24 Stat. L., 507, c. 359, s. 9; 1 Supp., 561.

SEC. 181. The plaintiff or the United States, in any suit brought under the provisions of the section last preceding, shall have the same right of appeal as is conferred under sections two hundred and forty-two and two hundred and forty-three; and such right shall be exercised only within the time and in the manner therein prescribed. (*36 Stat. L., 1142.*)

Except for verbal changes required for purposes of revision this section states what was existing law.

See notes to sections 242 and 243 of this Code, p. 123.

"A finding of fact and law made, at the request of a head of a department, with the consent of the claimant, and transmitted to such department," is not a judgment within the meaning of this section, and is not appealable to the Supreme Court. In re Sanborn, 148 U. S., 226. When appeal or writ of error is the proper remedy, see Chase *v.* U. S., 489. See also U. S. *v.* Davis, 131 U. S., 39.

Appeals in Indian cases.

SEC. 182. In any case brought in the Court of Claims under any Act of Congress by which that court is authorized to render a judgment or decree against the United States, or against any Indian tribe or any Indians, or against any fund held in trust by the United States for any Indian tribe or for any Indians, the claimant, or the United States, or the tribe of Indians, or other party in interest shall have the same right of appeal as is conferred under sections two hundred and forty-two and two hundred and forty-three; and such right shall be exercised only within the time and in the manner therein prescribed. (*36 Stat. L., 1142.*)

Limitations.

This section is new legislation. The purpose thereof is "to give to the United States as trustee for Indian tribes the right of appeal from the Court of Claims in certain cases." Cong. Record, 61st Congress, 3rd Session, pp. 3999, 4002.

Attorney-General's report to Congress.

SEC. 183. The Attorney-General shall report to Congress, at the beginning of each regular session, the suits under section one hundred and eighty, in which a final judgment or decree has been rendered, giving the date of each and a statement of the costs taxed in each case. (*36 Stat. L., 1142.*)

3 Mar., 1887, 24 Stat. L., 507, c. 359, s. 11; 1 Supp., 561.

The word "regular" before the word "session" in the second line of the section has been added, in the belief that Congress did not mean to require a report at the beginning of any special session. The dropping of the words "of Congress" in the second line, and the substitution of the words "section one hundred and eighty" for "this act," make no change in the meaning of the section.

Loyalty a jurisdictional fact in certain claims.

SEC. 184. In any case of a claim for supplies or stores taken by or furnished to any part of the military or naval forces of the United States for their use during the late Civil War, the petition shall aver that the person who furnished such supplies or stores, or from whom such supplies or stores were taken, did not give any aid or comfort to said rebellion, but was throughout the war loyal to the Government of the United States, and the fact of such loyalty shall be a jurisdictional fact; and unless the said court shall, on a preliminary inquiry, find that the person who furnished such supplies or stores, or from whom the same were taken as aforesaid, was loyal to the Government of the United States throughout said war, the court shall not have jurisdiction of such cause, and the same shall, without further proceedings, be dismissed. (*36 Stat. L., 1142.*)

3 Mar., 1883, 22 Stat. L., 485, c. 116, s. 4; 1 Supp., 403.

Dismissal if not proved.

Except for the substitution of the words "Civil War" for the words "war for the suppression of the rebellion," this section states what was existing law. That this section is to be considered in connection with section 1074, Revised Statutes (section 161 of this Code), see Watson *v.* U. S., 25 Ct. Cl., 116; Hall *v.* U. S., 27 Ct. Cl., 438. The court will only consider the loyalty of the person who furnished the supplies or stores. Lynch *v.* U. S., 31 Ct. Cl., 62. See also Randolph *v.* U. S., 21 Ct. Cl., 282. As to the character of proof of loyalty required, see Austin *v.* U. S., 155 U. S., 417.

Attorney-General to appear for the defense.

SEC. 185. The Attorney-General, or his assistants under his direction, shall appear for the defense and protection of the interests of the United States in all cases which may be transmitted to the Court of Claims under the provisions of this chapter, with the same power to interpose counterclaims, offsets, defenses for fraud practiced or attempted to be practiced by claimants, and other defenses, in like manner as he is required to defend the United States in said court. (*36 Stat. L., 1142.*)

3 Mar., 1883, 22 Stat. L., 486, c. 116, s. 5; 1 Supp., 403.

The changes made in this section consist in the omission of the word "that" at the beginning of the section, the omission of the word "now" before the word "required," and in the substitution of the words "the provisions of this chapter" for the words "this act." The effect of this substitution is to require the Attorney General to appear in all cases arising under the provisions of this chapter, instead of cases arising under the so-called Bowman Act, from which this section is drawn, and to interpose the proper defenses to suits.

SEC. 186. No person shall be excluded as a witness in the Court of Claims on account of color or because he or she is a party to or interested in the cause or proceeding; and any plaintiff or party in interest may be examined as a witness on the part of the Government. (*36 Stat. L., 1143.*)

Persons not to be excluded as witnesses on account of color or because of interest; plaintiff may be witness for Government.

R. S., s. 1078.
3 Mar., 1883, 22 Stat. L., 486, c. 116, s. 6; 1 Supp., 403.
3 Mar., 1887, 24 Stat. L., 506, c. 359, s. 8; 1 Supp., 561.
5 Feb., 1912, 37 Stat. L., 61, c. 28.

This section is a composition of section 1078, Revised Statutes, which prohibited the exclusion of a witness on account of color; of section 6 of the Bowman Act and section 8 of the Tucker Act, which permitted parties in interest to be witnesses, the latter section authorizing the Government to examine as a witness in its behalf a party in interest. The section is made applicable to all cases in the Court of Claims, and was amended as here given by the act of February 5, 1912, which inserted the word "or" after the word "color" in the second line.

SEC. 187. Reports of the Court of Claims to Congress, under sections one hundred and forty-eight and one hundred and fifty one, if not finally acted upon during the session at which they are reported, shall be continued from session to session and from Congress to Congress until the same shall be finally acted upon. (*36 Stat. L., 1143.*)

Reports of court to Congress.

3 Mar., 1883, 22 Stat. L., 486, c. 116, s. 7; 1 Supp., 404.

This section changed the law by enumerating the sections applicable in place of the words "this act" occurring in section 7 of the Bowman Act.

CHAPTER EIGHT.

THE COURT OF CUSTOMS APPEALS.

NOTE TO CHAPTER EIGHT.—This chapter is drawn from a single section of the tariff act of August 5, 1909 (sec. 29). It is here broken up into twelve sections for purposes of a proper revision. In some sections kindred provisions appearing in different parts of the section have been brought together for the purpose of a more logical arrangement of the subject matter.

SEC. 188. There shall be a United States Court of Customs Appeals, which shall consist of a presiding judge and four associate judges, each of whom shall be appointed by the President, by and with the advice and consent of the Senate, and shall receive a salary of seven thousand dollars a year. The presiding judge shall be so designated in the order of appointment and in the commission issued to him by the President; and the associate judges shall have preced-

Court of Customs Appeals; appointment and salary of judges; quorum; circuit and district judges may act in place of judge disqualified, etc.

5 Aug., 1909, 36 Stat. L., 105–107, c. 6, s. 28.

25 Feb., 1910, 36 Stat. L., 214, c. 62.

ence according to the date of their commissions. Any three members of said court shall constitute a quorum, and the concurrence of three members shall be necessary to any decision thereof. In case of a vacancy or of the temporary inability or disqualification, for any reason, of one or two of the judges of said court, the President may, upon the request of the presiding judge of said court, designate any qualified United States circuit or district judge or judges to act in his or their place; and such circuit or district judges shall be duly qualified to so act. (*36 Stat. L., 1143.*)

Quorum.

Vacancies.

This section states in concise terms what was existing law, although the provisions of the section are not in the order in which they appear in the original act. The salaries of the judges are as fixed by the deficiency act of February 25, 1910.

Court to be always open for business; terms may be held in any circuit; when expenses of judges to be paid.

SEC. 189. The said Court of Customs Appeals shall always be open for the transaction of business, and sessions thereof may, in the discretion of the court, be held in the several judicial circuits, and at such places as said court may from time to time designate. Any judge who, in pursuance of the provisions of this chapter, shall attend a session of said court at any place other than the city of Washington, shall be paid, upon his written and itemized certificate, by the marshal of the district in which the court shall be held, his actual and necessary expenses incurred for travel and attendance, and the actual and necessary expenses of one stenographic clerk who may accompany him; and such payments shall be allowed the marshal in the settlement of his accounts with the United States. (*36 Stat. L., 1143.*)

5 Aug., 1909, 36 Stat. L., 105–106, c. 6, s. 2.

Expenses.

Except for the substitution of the word "chapter" for "act," this section is a reenactment and consolidation of two provisions of the organic act.

Marshal of the court; appointment, salary, and duties.

SEC. 190. Said court shall have the services of a marshal, with the same duties and powers, under the regulations of the court, as are now provided for the marshal of the Supreme Court of the United States, so far as the same may be applicable. Said services within the District of Columbia shall be performed by a marshal to be appointed by and to hold office during the pleasure of the court, who shall receive a salary of three thousand dollars per annum. Said services outside of the District of Columbia shall be performed by the United States marshals in and for the districts where sessions of said court may be held; and to this end said marshals shall be the marshals of said court. The marshal of said court, for the District of Columbia, is authorized to purchase, under the direction of the presiding judge, such books, periodicals, and stationery, as may be necessary for the use of said court; and such expenditures shall be allowed and paid by the Secretary of the Treasury upon claim duly made and approved by said presiding judge. (*36 Stat. L., 1144.*)

5 Aug., 1909, 36 Stat. L., 105, 108, c. 6, s. 28.

Salary.

Contingent expenses.

The word "shall" is substituted for the word "to." Otherwise the section simply transposes some of the clauses of the original law.

Clerk of the court; appointment, salary and duties.

SEC. 191. The court shall appoint a clerk, whose office shall be in the city of Washington, District of Columbia, and who shall perform and exercise the same duties and powers in regard to all matters within the jurisdiction of said court as are now exercised and performed by the clerk of the Supreme Court of the United States, so far as the same may be applicable. The salary of the clerk shall be three thousand five hundred dollars per annum, which sum shall be in full payment for all service rendered by such clerk; and all fees of any kind whatever, and all costs shall be by him turned into the United States Treasury. Said clerk shall not be appointed by the court or any judge thereof as a commissioner, master, receiver, or referee. The costs and fees in the said court shall be fixed and established by said court in a table of fees to be adopted and approved by

5 Aug., 1909, 36 Stat. L., 105, c. 6, s. 28.
25 Feb., 1910, 36 Stat. L., 214, c. 62.

Salary.

Prohibitions.

Costs and fees.

the Supreme Court of the United States within four months after the organization of said court: *Provided*, That the costs and fees so fixed shall not, with respect to any item, exceed the costs and fees charged in the Supreme Court of the United States; and the same shall be expended, accounted for, and paid over to the Treasury of the United States. (*36 Stat. L., 1144.*)

This section made no change in the original law. The salary of the clerk is as fixed by the deficiency act of February 25, 1910.

Assistant clerk, stenographic clerks, and reporter; appointment, salary, and duties.

5 Aug., 1909, 36 Stat. L., 107, c. 6, s. 28.
25 Feb., 1910, 36 Stat. L., 214, c. 62.

SEC. 192. In addition to the clerk, the court may appoint an assistant clerk at a salary of two thousand dollars per annum, five stenographic clerks at a salary of one thousand six hundred dollars per annum each, one stenographic reporter at a salary of two thousand five hundred dollars per annum, and a messenger at a salary of eight hundred and forty dollars per annum, all payable in equal monthly installments, and all of whom, including the clerk, shall hold office during the pleasure of and perform such duties as are assigned them by the court. Said reporter shall prepare and transmit to the Secretary of the Treasury once a week in time for publication in the Treasury Decisions copies of all decisions rendered to that date by said court, and prepare and transmit, under the direction of said court, at least once a year, reports of said decisions rendered to that date, constituting a volume, which shall be printed by the Treasury Department in such numbers and distributed or sold in such manner as the Secretary of the Treasury shall direct. (*36 Stat. L., 1144.*)

Term of office.

Decisions.

Distribution of decisions.

The salaries of the various officers and clerks have been revised in accordance with the changes made therein by the deficiency act of February 25, 1910.

Rooms for holding court to be provided; bailiffs and messengers.

5 Aug., 1909, 36 Stat. L., 106, c. 6, s. 28.

SEC. 193. The marshal of said court for the District of Columbia and the marshals of the several districts in which said Court of Customs Appeals may be held shall, under the direction of the Attorney-General, and with his approval, provide such rooms in the public buildings of the United States as may be necessary for said court: *Provided*, That in case proper rooms can not be provided in such buildings, then the said marshals, with the approval of the Attorney-General, may, from time to time, lease such rooms as may be necessary for said court. The bailiffs and messengers of said court shall be allowed the same compensation for their respective services as are allowed for similar services in the existing district courts. In no case shall said marshals secure other rooms than those regularly occupied by existing district courts, or other public officers, except where such can not, by reason of actual occupancy or use, be occupied or used by said Court of Customs Appeals. (*36 Stat. L., 1144.*)

Leases permitted.

Except for the omission of the words "of the United States" after the words "Attorney General" and the breaking of the section into more sentences, this section states the provisions of the original law.

To be a court of record; to prescribe form and style of seal, and establish rules and regulations; may affirm, modify, or reverse and remand case, etc.

5 Aug., 1909, 36 Stat. L., 105, 107, c. 6, s. 28.

SEC. 194. The said Court of Customs Appeals shall be a court of record, with jurisdiction as in this chapter established and limited. It shall prescribe the form and style of its seal, and the form of its writs and other process and procedure, and exercise such powers conferred by law as may be conformable and necessary to the exercise of its jurisdiction. It shall have power to establish all rules and regulations for the conduct of the business of the court, and as may be needful for the uniformity of decisions within its jurisdiction as conferred by law. It shall have power to review any decision or matter within its jurisdiction, and may affirm, modify, or reverse the same and remand the case with such orders as may seem to it proper in the premises, which shall be executed accordingly. (*36 Stat. L., 1145.*)

General power.

The repeating of the name of the court at the beginning of the section, the substitution of the words "in this chapter" for the word "hereafter" and the breaking of the section into more sentences make no change in the original law.

POWER TO REMAND CASE.

In denying the power of the Court of Customs Appeals to remand a case to the Board of General Appraisers "for the purpose of taking testimony in advance of a decision" by that court, Presiding Judge Montgomery said: "If any one purpose is manifest in the enactment creating this court, it is the purpose of providing a speedy hearing for both the importer and the Government, and an early determination of the questions arising in classification cases. * * * It seems obvious that the intent of this act was to confer upon this court appellate jurisdiction only, and that that appellate jurisdiction partakes of the nature of an appeal in equity, and authorizes a determination of questions of fact involved. * * * But such an appeal does not involve a trial *de novo* but a determination of the case upon the record made up by the Board of General Appraisers. * * * The practice of remanding a case to another tribunal to take testimony anew and to revise its holding has in the past been dependent upon express statutory authority, and is clearly not an incident of an appeal under any practice, ancient or modern." Stegeman *v.* U. S., 1 Ct. Cust. Appls., 211, 212. Nor will the court remand a case for a new trial where it simply appears that there has been a failure of proof. A party can not present his case "piecemeal." Larkin Co. *v.* U. S., 2 Ct. Cust. Appls., 483.

REVERSAL OF DECISION.

"In order to warrant a reversal of the board, we must be satisfied that its finding is wholly without evidence to support it or that it is clearly contrary to the weight of evidence." Carson *v.* U. S., 2 Ct. Cust. Appls., 109.

Final decisions of Board of General Appraisers to be reviewed only by customs court.

5 Aug., 1909, 36 Stat. L., 106, c. 6, s. 28.

SEC. 195. The Court of Customs Appeals established by this chapter shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided, final decisions by a Board of General Appraisers in all cases as to the construction of the law and the facts respecting the classification of merchandise and the rate of duty imposed thereon under such classification, and the fees and charges connected therewith, and all appealable questions as to the jurisdiction of said board, and all appealable questions as to the laws and regulations governing the collection of the customs revenues; and the judgments and decrees of said Court of Customs Appeals shall be final in all such cases. (*36 Stat. L., 1145.*)

Judgments final.

This section reenacts the original law, except for the substitution of the word "chapter" for "act" and the word "herein" for the words "in this act."

FORMER JURISDICTION.

See act of June 10, 1890, 26 Stat. L., 138, c. 406, s. 15, for former jurisdiction of circuit courts to review decisions of the Board of General Appraisers. See also American Sugar Ref. Co. *v.* U. S., 211 U. S., 155, where it is said: "By section 6 of the act of March 3, 1891, c. 517, 26 Stat., 826, 828, the judgments or decrees of the Circuit Courts of Appeals are made final in all cases arising under the revenue law, and can only be carried to the Supreme Court by certificate or on certiorari. * * * The present direct appeal to this court is a mere attempt to obtain a reconsideration of questions arising under the revenue laws and already determined by the Circuit Court of Appeals in due course. Such direct appeals, under section 5 of the act of 1891, can not be entertained unless the construction or application of the Constitution of the United States is involved."

Section 6 of the act of 1891 is revised in section 128 of this code. Section 5 of that act is revised in section 238 of this code.

CLASSIFICATION OF MERCHANDISE.

"The Government has the right to prescribe the conditions on which it will subject itself to the judgment of the courts in the collection of its revenues. One of these conditions is, and always has been, that the determination of appraisers as to the dutiable value of goods shall be conclusive and not reexaminable in a suit at law." Wolff *v.* U. S., 1 Ct. Cust. Appls., 184. See Oelrichs *v.* U. S., 2 Ct. Cust. Appls., 359.

CASES INVOLVING THE JURISDICTION OF THE BOARD.

Power to review facts, U. S. *v.* Perkins, 2 Ct. Cust. Appls., 323. To issue commissions to take testimony, U. S. *v.* Hoffman-La Roche Chem. Works, 1 Ct. Cust.

Appls., 276. To admit merchandise free of duty, U. S. *v.* Danker & Marston, 2 Ct. Cust. Appls., 462. The rulings of the board will not be disturbed on defective proof. U. S. *v.* Wertheimer & Co., 2 Ct. Cust. Appls., 454.

SCOPE OF REVIEW.

The court has power to review the facts as well as questions of law. Sheldon *v.* U. S., 2 Ct. Cust. Appls., 51.

Other courts deprived of jurisdiction in customs cases; pending cases excepted.

5 Aug., 1909, 36 Stat. L., 106, c. 6, s. 28.

SEC. 196. After the organization of said court, no appeal shall be taken or allowed from any Board of United States General Appraisers to any other court, and no appellate jurisdiction shall thereafter be exercised or allowed by any other courts in cases decided by said Board of United States General Appraisers; but all appeals allowed by law from such Board of General Appraisers shall be subject to review only in the Court of Customs Appeals hereby established, according to the provisions of this chapter: *Provided*, That nothing in this chapter shall be deemed to deprive the Supreme Court of the United States of jurisdiction to hear and determine all customs cases which have heretofore been certified to said court from the United States circuit courts of appeals on applications for writs of certiorari or otherwise, nor to review by writ of certiorari any customs case heretofore decided or now pending and hereafter decided by any circuit court of appeals, provided application for said writ be made within six months after August fifth, nineteen hundred and nine: *Provided, further*, That all customs cases decided by a circuit or district court of the United States or a court of a Territory of the United States prior to said date above mentioned, and which have not been removed from said courts by appeal or writ of error, and all such cases heretofore submitted for decision in said courts and remaining undecided may be reviewed on appeal at the instance of either party by the United States Court of Customs Appeals, provided such appeal be taken within one year from the date of the entry of the order, judgment, or decrees sought to be reviewed. (*36 Stat. L., 1145.*)

Jurisdiction of Supreme Court.

Certiorari.

Review of cases not removed, etc.

This section was changed by substituting the word "chapter" for "act," and the words "August fifth, nineteen hundred and nine" for the words "the passage of this act." This was considered necessary in order to limit, as provided in the original act, the time within which cases might go to the Supreme Court.

JURISDICTION OF SUPREME COURT.

In the case of Altman & Co. *v.* U. S., 224 U. S., 598, the Supreme Court said: "We think it is plain that this court will entertain a direct review in a revenue case which involves not only questions of classification and amount of duty thereunder, as specified in the revenue act to which we have referred, but also a question under the fifth section (circuit court of appeals act) as to the constitutionality of a law of the United States or the validity or construction of a treaty under its authority."

APPEALS.

That the petition for review of the decision of the Circuit Court may be treated as an application for the allowance of an appeal after mandate has issued, see Gross *v.* U. S., 1 Ct. Cust. Appls., 289. As to the time in which appeals are to be taken, see U. S. *v.* Vandegrift & Co., 2 Ct. Cust. Appls., 434.

Transfer to customs court of pending cases; completion of testimony.

5 Aug., 1909, 36 Stat. L., 107, c. 6, s. 28.

SEC. 197. Immediately upon the organization of the Court of Customs Appeals, all cases within the jurisdiction of that court pending and not submitted for decision in any of the United States circuit courts of appeals, United States circuit, territorial or district courts, shall, with the record and samples therein, be certified by said courts to said Court of Customs Appeals for further proceedings in accordance herewith: *Provided*, That where orders for the taking of further testimony before a referee have been made in any of such cases, the taking of such testimony shall be completed before such certification. (*36 Stat. L., 1145.*)

Completion of testimony.

This section made no change in the law.

Appeals from Board of General Appraisers; time within which to be taken; record to be transmitted to customs court.

5 Aug., 1909, 36 Stat. L., 107, c. 6, s. 28.

SEC. 198. If the importer, owner, consignee, or agent of any imported merchandise, or the collector or Secretary of the Treasury, shall be dissatisfied with the decision of the Board of General Appraisers as to the construction of the law and the facts respecting the classification of such merchandise and the rate of duty imposed thereon under such classification, or with any other appealable decision of said board, they, or either of them, may, within sixty days next after the entry of such decree or judgment, and not afterwards, apply to the Court of Customs Appeals for a review of the questions of law and fact involved in such decision: *Provided*, That in Alaska and in the insular and other outside possessions of the United States ninety days shall be allowed for making such application to the Court of Customs Appeals. Such application shall be made by filing in the office of the clerk of said court a concise statement of errors of law and fact complained of; and a copy of such statement shall be served on the collector, or on the importer, owner, consignee, or agent, as the case may be. Thereupon the court shall immediately order the Board of General Appraisers to transmit to said court the record and evidence taken by them, together with the certified statement of the facts involved in the case and their decision thereon; and all the evidence taken by and before said board shall be competent evidence before said Court of Customs Appeals. The decision of said Court of Customs Appeals shall be final, and such cause shall be remanded to said Board of General Appraisers for further proceedings to be taken in pursuance of such determination. (*36 Stat. L., 1146.*)

Time limit.

Alaska and insular possessions.

Application.

Service.

Order to board.

Decision final.

This section made no change in the law.

SCOPE OF REVIEW.

Construing the provisions of this section, the Court of Customs Appeals said: "A careful reading of this statute satisfies us that it was the intent of Congress that this court should have the power to review questions of fact. The circumstance that all the evidence before the board is competent evidence and that all is required to be returned to this court indicates that such was the intent." U. S. *v.* Riebe, 1 Ct. Cust. Appls., 20. See also Holbrook *v.* U. S., 1 Ct. Cust. Appls., 263; U. S. *v.* Rosenstein, 1 Ct. Cust. Appls., 304; U. S. *v.* Oberle, 1 Ct. Cust. Appls., 525; Carson *v.* U. S., 2 Ct. Cust. Appls., 105, 109, where the court said: "In order to warrant a reversal of the board, we must be satisfied that its finding is wholly without evidence to support it or that it is clearly contrary to the weight of evidence."

TIME FOR TAKING APPEALS.

"Where a motion for a new trial has been entered within the time fixed by law, the limitation of 60 days within which it is permitted to take an appeal begins to run not from the date of the original decision, but from the date the motion for a new trial is disposed of." U. S. *v.* Vandegrift & Co., 2 Ct. Cust. Appls., 434. As to the time for taking appeals in cases decided before the organization of the court, see U. S. *v.* Marsching, 1 Ct. Cust. Appls., 8.

REMAND FOR FURTHER PROCEEDINGS.

That the court may order the return of evidence excluded by the Board of Appraisers over objection taken, see Oelrichs *v.* U. S., 1 Ct. Cust. Appls., 203. That the court will not remand a case because of failure to make proof, see Larkin Co. *v.* U. S., 2 Ct. Cust. Appls., 483.

Records filed in customs court to be at once placed on calendar; calendar to be called every sixty days.

5 Aug., 1909, 36 Stat. L., 107, c. 6, s. 28.

SEC. 199. Immediately upon receipt of any record transmitted to said court for determination the clerk thereof shall place the same upon the calendar for hearing and submission; and such calendar shall be called and all cases thereupon submitted, except for good cause shown, at least once every sixty days: *Provided*, That such calendar need not be called during the months of July and August of any year. (*36 Stat. L., 1146.*)

This section made no change in the law.

CHAPTER NINE.

THE COMMERCE COURT.

NOTE TO CHAPTER NINE.—The provisions of this chapter are drawn from the act of June 18, 1910, 36 Stat. L., 539, c. 309, creating the Commerce Court and defining the jurisdiction thereof.

In the case of Procter & Gamble *v.* U. S., 225 U. S., 282, 294, 295, 298, the Supreme Court reversed the decision of the Court of Commerce, 188 Fed., 221, holding that that court had jurisdiction to grant relief from an order of the Interstate Commerce Commission refusing to award the relief sought, on the ground that the jurisdiction conferred by clause "Second," section 207, of this Code, "to enjoin, set aside, annul, or suspend in whole or in part any order of the Interstate Commerce Commission," applied only to affirmative orders of the Commission. Mr. Chief Justice White said: "It cannot be disputed that the act creating the Commerce Court was intended to be but a part of the existing system for the regulation of interstate commerce, which was established by virtue of the original adoption in 1887 of the act to regulate commerce, and which was expanded by the repeated amendments of that act which followed, developed in practical execution by the rulings of the body (Interstate Commerce Commission), upon whom was cast the administrative enforcement of the act, the whole elucidated and sanctioned by a long line of decisions of this court. That in adopting the provisions concerning the commerce court and making it part of the system, it was not intended to destroy the existing machinery or method of regulation, but to cause it to be more efficient by affording a more harmonious means for securing the judicial enforcement of the act to regulate commerce is certain. * * * The first six sections, which called into being the Commerce Court and defined its powers, all demonstrate the purpose as above stated, that is, to adjust the powers and duties of the newly created court in such manner as to cause them to accord with the system of regulation provided by the act to regulate commerce as it then existed. * * * It is impossible, we think, in reason, to give to the act creating the Commerce Court the meaning affixed to it by the Court below, since to do so would be virtually to overthrow the entire system which had arisen from the adoption and enforcement of the act to regulate commerce."

Subsequently to the decision in that case, the Commerce Court was practically abolished by a provision in the legislative, executive and judicial appropriation act of August 23, 1912, (37 Stat. L., 412, c. 350), which limited the appropriation for that court until and including March 4, 1913. The appropriation was later extended to June 30, 1913, by the general deficiency appropriation act of March 4, 1913. (Public law 434, 62d Cong., 3d sess.)

Commerce Court created; judges of, appointment and designation; expense allowance to judges.

18 June, 1910, 36 Stat. L., 539, 540, c. 309, s. 1.

SEC. 200. There shall be a court of the United States, to be known as the Commerce Court, which shall be a court of record, and shall have a seal of such form and style as the court may prescribe. The said court shall be composed of five judges, to be from time to time designated and assigned thereto by the Chief Justice of the United States, from among the circuit judges of the United States, for the period of five years, except that in the first instance the court shall be composed of the five additional circuit judges referred to in the next succeeding section, who shall be designated by the President to serve for one, two, three, four, and five years, respectively, in order that the period of designation of one of the said judges shall expire in each year thereafter. In case of the death, resignation, or termination of assignment of any judge so designated, the Chief Justice shall designate a circuit judge to fill the vacancy so caused and to serve during the unexpired period for which the original designation was made. After the year nineteen hundred and fourteen no circuit judge shall be redesignated to serve in the Commerce Court until the expiration of at least one year after the expiration of the period of his last previous designation. The judge first designated for the five-year period shall be the presiding judge of said court, and thereafter the judge senior in designation shall be the presiding judge. The associate judges shall have precedence and shall succeed to the place and powers of the presiding judge whenever he may be absent or incapable of acting in the order of the date of their designations. Four of said judges shall constitute a quorum, and at least a majority of the court shall concur in all decisions. Each of the judges during the period of his service in the Commerce Court shall, on account of the regular sessions of the court being held in the city of Washington, receive in addition to his salary as circuit judge an expense allowance at the rate of one thousand five hundred dollars per annum. (*36 Stat. L., 1146.*)

Circuit judges.

Designation.

Vacancies.

Redesignations.

Presiding judge.

Expense allowance.

Additional circuit judges; appointment and assignment.

18 June, 1910, 36 Stat. L., 540, c. 309, s. 1.

SEC. 201. The five additional circuit judges authorized by the act to create a Commerce Court, and for other purposes, approved June eighteenth, nineteen hundred and ten, shall hold office during good behavior, and from time to time shall be designated and assigned by the Chief Justice of the United States for service in the district court of any district, or the circuit court of appeals for any circuit, or in the Commerce Court, and when so designated and assigned for service in a district court or circuit court of appeals shall have the powers and jurisdiction in this act conferred upon a circuit judge in his circuit. (*36 Stat. L., 1147.*)

Powers.

Officers of the court, clerk, marshal, etc., salaries, etc.

18 June, 1910, 36 Stat. L., 540, c. 309, s. 1.

SEC. 202. The court shall also have a clerk and a marshal, with the same duties and powers, so far as they may be appropriate and are not altered by rule of the court, as are now possessed by the clerk and marshal, respectively, of the Supreme Court of the United States. The offices of the clerk and marshal of the court shall be in the city of Washington, in the District of Columbia. The judges of the court shall appoint the clerk and marshal, and may also appoint, if they find it necessary, a deputy clerk and deputy marshal; and such clerk, marshal, deputy clerk, and deputy marshal, shall hold office during the pleasure of the court. The salary of the clerk shall be four thousand dollars per annum; the salary of the marshal three thousand dollars per annum; the salary of the deputy clerk two thousand five hundred dollars per annum; and the salary of the deputy marshal two thousand five hundred dollars per annum. The said clerk and marshal may, with the approval of the court, employ all requisite assistance. The costs and fees in said court shall be established by the court in a table thereof, approved by the Supreme Court of the United States, within four months after the organization of the court; but such costs

Offices.

Salaries.

Costs and fees.

and fees shall in no case exceed those charged in the Supreme Court of the United States, and shall be accounted for and paid into the Treasury of the United States. (*36 Stat. L., 1147.*)

Court to be always open for business; sessions of to be held in Washington and elsewhere.

18 June, 1910, 36 Stat. L., 541, c. 309, s. 1.

SEC. 203. The Commerce Court shall be always open for the transaction of business. Its regular sessions shall be held in the city of Washington, in the District of Columbia; but the powers of the court or of any judge thereof, or of the clerk, marshal, deputy clerk, or deputy marshal, may be exercised anywhere in the United States; and for expedition of the work of the court and the avoidance of undue expense or inconvenience to suitors the court shall hold sessions in different parts of the United States as may be found desirable. The actual and necessary expenses of the judges, clerk, marshal, deputy clerk, and deputy marshal of the court incurred for travel and attendance elsewhere than in the city of Washington shall be paid upon the written and itemized certificate of such judge, clerk, marshal, deputy clerk, or deputy marshal, by the marshal of the court, and shall be allowed to him in the settlement of his accounts with the United States. (*36 Stat. L., 1147.*)

Expenses elsewhere.

Marshals to provide rooms for holding court outside of Washington.

18 June, 1910, 36 Stat. L., 541, c. 309, s. 1.

SEC. 204. The United States marshals of the several districts outside of the city of Washington in which the Commerce Court may hold its sessions shall provide, under the direction and with the approval of the Attorney-General, such rooms in the public buildings of the United States as may be necessary for the court's use; but in case proper rooms can not be provided in such public buildings, said marshals, with the approval of the Attorney-General, may then lease from time to time other necessary rooms for the court. (*36 Stat. L., 1148.*)

Assignment of judges to other duty; vacancies, how filled.

18 June, 1910, 36 Stat. L., 541, c. 309, s. 1.

Illness or disability.

SEC. 205. If, at any time, the business of the Commerce Court does not require the services of all the judges, the Chief Justice of the United States may, by writing, signed by him and filed in the Department of Justice, terminate the assignment of any of the judges or temporarily assign him for service in any district court or circuit court of appeals. In case of illness or other disability of any judge assigned to the Commerce Court the Chief Justice of the United States may assign any other circuit judge of the United States to act in his place, and may terminate such assignment when the exigency therefor shall cease; and any circuit judge so assigned to act in place of such judge shall, during his assignment, exercise all the powers and perform all the functions of such judge. (*36 Stat. L., 1148.*)

Powers of court and judges; writs, process, procedure, etc.

18 June, 1910, 36 Stat. L., 541, c. 309, s. 1.

Writs.

Rules.

Process, return, etc.

SEC. 206. In all cases within its jurisdiction the Commerce Court and each of the judges assigned thereto, shall, respectively, have and may exercise any and all of the powers of a district court of the United States and of the judges of said court, respectively, so far as the same may be appropriate to the effective exercise of the jurisdiction hereby conferred. The Commerce Court may issue all writs and process appropriate to the full exercise of its jurisdiction and powers and may prescribe the form thereof. It may also, from time to time, establish such rules and regulations concerning pleading, practice, or procedure in cases or matters within its jurisdiction as to the court shall seem wise and proper. Its orders, writs, and process may run, be served, and be returnable anywhere in the United States; and the marshal and deputy marshal of said court and also the United States marshals and deputy marshals in the several districts of the United States shall have like powers and be under like duties to act for and in behalf of said court as to pertain to United States marshals and deputy marshals generally when acting under like conditions concerning suits or matters in the district courts of the United States. (*36 Stat. L., 1148.*)

As to the powers of a single judge, see note to section 266 of this Code.

Jurisdiction of the court.

18 June, 1910, 36 Stat. L., 539, c. 309, s. 1.

SEC. 207. The Commerce Court shall have the jurisdiction possessed by circuit courts of the United States and the judges thereof immediately prior to June eighteenth, nineteen hundred and ten, over all cases of the following kinds:

To enforce orders of Interstate Commerce Commission.

First. All cases for the enforcement, otherwise than by adjudication and collection of a forfeiture or penalty or by infliction of criminal punishment, of any order of the Interstate Commerce Commission other than for the payment of money.

Suits to enjoin, etc.

Second. Cases brought to enjoin, set aside, annul, or suspend in whole or in part any order of the Interstate Commerce Commission.

Unjust discriminations.

Third. Such cases as by section three of the Act entitled "An Act to further regulate commerce with foreign nations and among the States," approved February nineteenth, nineteen hundred and three, are authorized to be maintained in a circuit court of the United States.

Mandamus proceedings.

Fourth. All such mandamus proceedings as under the provisions of section twenty or section twenty-three of the Act entitled "An Act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, as amended, are authorized to be maintained in a circuit court of the United States.

Limitations on jurisdiction.

Nothing contained in this chapter shall be construed as enlarging the jurisdiction now possessed by the circuit courts of the United States or the judges thereof, that is hereby transferred to and vested in the Commerce Court.

Exclusive jurisdiction.

Exceptions.

The jurisdiction of the Commerce Court over cases of the foregoing classes shall be exclusive; but this chapter shall not affect the jurisdiction possessed by any circuit or district court of the United States over cases or proceedings of a kind not within the above-enumerated classes. (*36 Stat. L., 1148.*)

On the construction of this section generally, see Proctor & Gamble *v.* U. S., 225 U. S., 282, 292, 293.

"First." See act of February 4, 1887, section 16, 24 Stat. L., 384; act of March 2, 1889, 25 Stat. L., 859, c. 382, s. 5; Act of June 18, 1910, 36 Stat. L., 554. See East Tennessee, etc. R. Co. *v.* Interstate Commerce Com., 181 U. S., 1.

"Second." See note to section 208 of this Code. See also Act of June 29, 1906, 34 Stat. L., 589, c. 3591, s. 4, amending section 15 of the act of February 4, 1887, 24 Stat. L., 384; Act of June 18, 1910, 36 Stat. L., 551. See N. Y. C. & H. R. R. Co. *v.* Interstate Commerce Com., 168 Fed., 131, 139.

"Third." Act of February 19, 1903, 32 Stat. L., 847, c. 708, s. 3; act of June 29, 1906, 34 Stat. L., 584. See U. S. *v.* Union Stock Yards Co., 226 U. S., 286.

"Fourth." Act of February 4, 1887, 24 Stat. L., 379, ss. 20, 23; act of June 29, 1906, 34 Stat. L., 584; act of February 25, 1909, 35 Stat. L., 648; act of March 2, 1889, 25 Stat. L., 855. See Int. Com. Com. *v.* Humboldt Steamship Co., 224 U. S., 474.

Suits to enjoin, etc., orders of Interstate Commerce Commission to be against United States; restraining orders, when granted without notice.

18 June, 1910, 36 Stat. L., 542, c. 309, s. 3.

SEC. 208. Suits to enjoin, set aside, annul, or suspend any order of the Interstate Commerce Commission shall be brought in the Commerce Court against the United States. The pendency of such suit shall not of itself stay or suspend the operation of the order of the Interstate Commerce Commission; but the Commerce Court, in its discretion, may restrain or suspend, in whole or in part, the operation of the commission's order pending the final hearing and determination of the suit. No order or injunction so restraining or suspending an order of the Interstate Commerce Commission shall be made by the Commerce Court otherwise than upon notice and after hearing,

Notice.

Irreparable damage.

Temporary suspension.

Limitation.

except that in cases where irreparable damage would otherwise ensue to the petitioner, said court, or a judge thereof may, on hearing after not less than three days' notice to the Interstate Commerce Commission and the Attorney-General, allow a temporary stay or suspension in whole or in part of the operation of the order of the Interstate Commerce Commission for not more than sixty days from the date of the order of such court or judge, pending application to the court for its order or injunction, in which case the said order shall contain a specific finding, based upon evidence submitted to the judge making the order and identified by reference thereto, that

such irreparable damage would result to the petitioner and specifying the nature of the damage. The court may, at the time of hearing such application, upon a like finding, continue the temporary stay or suspension in whole or in part until its decision upon the application. (*36 Stat. L., 1149.*)

Continuance.

Construing this provision, the Supreme Court said: "Without ambiguity we think the statute contemplates three classes of orders: First, a temporary restraining order staying in whole or in part the operation of the order of the Interstate Commerce Commission for not more than sixty days from the date of the suspensive order, to be allowed by the court or a judge thereof; second, a preliminary injunction, that is, an injunction *pendente lite*, which, to quote the words of the statute, may be granted by the court to "restrain or suspend, in whole or in part, the operation of the Commission's order pending the final hearing and determination of the suit;' third, in the nature of things a perpetual injunction upon the entry of the final decree." U. S. *v.* Baltimore & O. R. R. Co., 225 U. S., 322.

Jurisdiction of court, how invoked; practice and procedure.

18 June, 1910, 36 Stat. L., 541, c. 309, s. 1.

SEC. 209. The jurisdiction of the Commerce Court shall be invoked by filing in the office of the clerk of the court a written petition setting forth briefly and succinctly the facts constituting the petitioner's cause of action, and specifying the relief sought. A copy of such petition shall be forthwith served by the marshal or a deputy marshal of the Commerce Court or by the proper United States marshal or deputy marshal upon every defendant therein named, and when the United States is a party defendant, the service shall be made by filing a copy of said petition in the office of the Secretary of the Interstate Commerce Commission and in the Department of Justice. Within thirty days after the petition is served, unless that time is extended by order of the court or a judge thereof, an answer to the petition shall be filed in the clerk's office, and a copy thereof mailed to the petitioner's attorney, which answer shall briefly and categorically respond to the allegations of the petition. No replication need be filed to the answer, and objections to the sufficiency of the petition or answer as not setting forth a cause of action or defense must be taken at the final hearing or by motion to dismiss the petition based on said grounds, which motion may be made at any time before answer is filed. In case no answer shall be filed as provided herein the petitioner may apply to the court on notice for such relief as may be proper upon the facts alleged in the petition. The court may, by rule, prescribe the method of taking evidence in cases pending in said court; and may prescribe that the evidence be taken before a single judge of the court, with power to rule upon the admission of evidence. Except as may be otherwise provided in this chapter, or by rule of the court, the practice and procedure in the Commerce Court shall conform as nearly as may be to that in like cases in a district court of the United States. (*36 Stat. L., 1149.*)

Service of petition.

Answers.

No replication.

Failure to answer; relief.

Evidence.

Procedure.

Final judgments and decrees reviewable in Supreme Court.

18 June, 1910, 36 Stat. L., 542, c. 309, s. 2.

SEC. 210. A final judgment or decree of the Commerce Court may be reviewed by the Supreme Court of the United States if appeal to the Supreme Court be taken by an aggrieved party within sixty days after the entry of said final judgment or decree. Such appeal may be taken in like manner as appeals from a district court of the United States to the Supreme Court, and the Commerce Court may direct the original record to be transmitted on appeal instead of a transcript thereof. The Supreme Court may affirm, reverse, or modify the final judgment or decree of the Commerce Court as the case may require. Appeal to the Supreme Court, however, shall in no case supersede or stay the judgment or decree of the Commerce Court appealed from, unless the Supreme Court or a justice thereof shall so direct; and appellant shall give bond in such form and of such amount as the Supreme Court, or the justice of that court allowing the stay, may require. An appeal may also be taken to the Supreme Court of the United States from an interlocutory order or decree of the Commerce Court granting or continuing an injunction restraining the enforcement of an order of the Interstate Commerce Commission,

Judgment not stayed unless Supreme Court so direct.

Appeals on injunctions.

Priority.

provided such appeal be taken within thirty days from the entry of such order or decree. Appeals to the Supreme Court under this section shall have priority in hearing and determination over all other causes except criminal causes in that court. (*36 Stat. L., 1150.*)

See U. S. *v.* Baltimore & Ohio R. R. Co., 225 U. S., 306.

Suits to be against United States; when United States may intervene.

18 June, 1910, 36 Stat. L., 543, c. 309, s. 4.

SEC. 211. All cases and proceedings in the Commerce Court which but for this chapter would be brought by or against the Interstate Commerce Commission, shall be brought by or against the United States, and the United States may intervene in any case or proceeding in the Commerce Court whenever, though it has not been made a party, public interests are involved. (*36 Stat. L., 1150.*)

Attorney-General to control all cases; Interstate Commerce Commission may appear as of right; parties interested may intervene, etc.

18 June, 1910, 36 Stat. L., 543, c. 309, s. 5.

SEC. 212. The Attorney-General shall have charge and control of the interests of the Government in all cases and proceedings in the Commerce Court, and in the Supreme Court of the United States upon appeal from the Commerce Court. If in his opinion the public interest requires it, he may retain and employ in the name of the United States, within the appropriations from time to time made by the Congress for such purposes, such special attorneys and counselors at law as he may think necessary to assist in the discharge of any of the duties incumbent upon him and his subordinate attorneys; and

Special counsel; compensation.

the Attorney-General shall stipulate with such special attorneys and counsel the amount of their compensation, which shall not be in excess of the sums appropriated therefor by Congress for such purposes,

Appearance of commission, parties in interest.

and shall have supervision of their action: *Provided*, That the Interstate Commerce Commission and any party or parties in interest to the proceeding before the commission, in which an order or requirement is made, may appear as parties thereto of their own motion and as of right, and be represented by their counsel, in any suit wherein is involved the validity of such order or requirement or any part thereof, and the interest of such party; and the court wherein is pending such suit may make all such rules and orders as to such appearances and representations, the number of counsel, and all matters of procedure, and otherwise, as to subserve the ends of justice and speed

Intervenors.

the determination of such suits: *Provided further*, That communities, associations, corporations, firms, and individuals who are interested in the controversy or question before the Interstate Commerce Commission, or in any suit which may be brought by any one under the provisions of this chapter, or the Acts of which it is amendatory or which are amendatory of it, relating to action of the Interstate Commerce Commission, may intervene in said suit or proceedings at any

Rights of intervenors.

time after the institution thereof; and the Attorney-General shall not dispose of or discontinue said suit or proceeding over the objection of such party or intervenor aforesaid, but said intervenor or intervenors may prosecute, defend, or continue said suit or proceeding unaffected by the action or non-action of the Attorney-General therein. (*36 Stat. L., 1150.*)

Complainants may appear and be made parties to case.

18 June, 1910, 36 Stat. L., 544, c. 309, s. 5.

SEC. 213. Complainants before the Interstate Commerce Commission interested in a case shall have the right to appear and be made parties to the case and be represented before the courts by counsel, under such regulations as are now permitted in similar circumstances under the rules and practice of equity courts of the United States. (*36 Stat. L., 1151.*)

Pending cases to be transferred to Commerce Court; exception; status of transferred cases.

18 June, 1910, 36 Stat. L., 544, c. 309, s. 6.

SEC. 214. Until the opening of the Commerce Court, all cases and proceedings of which from that time the Commerce Court is hereby given exclusive jurisdiction may be brought in the same courts and conducted in like manner and with like effect as is now provided by law; and if any such case or proceeding shall have gone to final judgment or decree before the opening of the Commerce Court, appeal may

Transfer of pending cases.

be taken from such final judgment or decree in like manner and with like effect as is now provided by law. Any such case or proceeding within the jurisdiction of the Commerce Court which may have been

begun in any other court as hereby allowed, before the said date, shall be forthwith transferred to the Commerce Court, if it has not yet proceeded to final judgment or decree in such other court unless it has been finally submitted for the decision of such court, in which case the cause shall proceed in such court to final judgment or decree and further proceeding thereafter, and appeal may be taken direct to the Supreme Court; and if remanded, such cause may be sent back to the court from which the appeal was taken or to the Commerce Court for further proceeding as the Supreme Court shall direct. All previous proceedings in such transferred case shall stand and operate notwithstanding the transfer, subject to the same control over them by the Commerce Court and to the same right of subsequent action in the case or proceeding as if the transferred case or proceeding had been orignally begun in the Commerce Court. The clerk of the court from which any case or proceeding is so transferred to the Commerce Court shall transmit to and file in the Commerce Court the originals of all papers filed in such case or proceeding and a certified transcript of all record entries in the case or proceeding up to the time of transfer. (*36 Stat. L., 1151.*)

Exception.

Status of cases transferred.

Original papers to be transferred.

CHAPTER TEN.

THE SUPREME COURT.

SEC. 215. The Supreme Court of the United States shall consist of a Chief Justice of the United States and eight associate justices, any six of whom shall constitute a quorum. (*36 Stat. L., 1152.*)

Number of justices.

R. S., s. 673.

This section is a reenactment of existing law.

Precedence of the associate justices.

R. S., s. 674.

SEC. 216. The associate justices shall have precedence according to the dates of their commissions, or, when the commissions of two or more of them bear the same date, according to their ages. (*36 Stat. L., 1152.*)

This section made no change in the law.

Vacancy in the office of Chief Justice.

R. S., s. 675.

SEC. 217. In case of a vacancy in the office of Chief Justice, or of his inability to perform the duties and powers of his office, they shall devolve upon the associate justice who is first in precedence, until such disability is removed, or another Chief Justice is appointed and duly qualified. This provision shall apply to every associate justice who succeeds to the office of Chief Justice. (*36 Stat. L., 1152.*)

This section is a reenactment of existing law.

Salaries of justices.

R. S., s. 676.
12 Feb., 1903, 32 Stat. L., 825, c. 547.

SEC. 218. The Chief Justice of the Supreme Court of the United States shall receive the sum of fifteen thousand dollars a year, and the justices thereof shall receive the sum of fourteen thousand five hundred dollars a year each, to be paid monthly. (*36 Stat. L., 1152.*)

This section is a reenactment of existing law.

Clerk, marshal, and reporter.

R. S., s. 677.

SEC. 219. The Supreme Court shall have power to appoint a clerk and a marshal for said court, and a reporter of its decisions. (*36 Stat. L., 1152.*)

Reenactment of existing law.

The clerk to give bond.

22 Feb., 1875, 18 Stat. L., 333, c. 95, s. 3; 1 Supp., 65.

New bond.

SEC. 220. The clerk of the Supreme Court shall, before he enters upon the execution of his office, give bond, with sufficient sureties, to be approved by the court, to the United States, in the sum of not less than five thousand and not more than twenty thousand dollars, to be determined and regulated by the Attorney-General, faithfully to discharge the duties of his office, and seasonably to record the decrees, judgments, and determinations of the court. The Supreme Court may at any time, upon the motion of the Attorney-General, to be made upon thirty days' notice, require a new bond, or a bond for an increased amount within the limits above prescribed; and the failure of the clerk to execute the same shall vacate his office. All bonds given by the clerk shall, after approval, be recorded in his office, and copies thereof from the records, certified by the clerk under seal of the court, shall be competent evidence in any court. The original bonds shall be filed in the Department of Justice. (*36 Stat. L., 1152.*)

The law revised in this section has been so modified as to apply only to the bond to be given by the clerk of the Supreme Court. All reference to the duties of the district attorneys is omitted from this section, as these provisions can only apply in the case of bonds to be given by the clerks of the district courts. The further change is made that a new bond, or a bond for an increased amount, may be ordered by the court upon the motion of the Attorney General.

Deputies of the clerk.

R. S., s. 678.

Defaults.

SEC. 221. One or more deputies of the clerk of the Supreme Court may be appointed by the court on the application of the clerk, and may be removed at the pleasure of the court. In case of the death of the clerk, his deputy or deputies shall, unless removed, continue in office and perform the duties of the clerk in his name until a clerk is appointed and qualified; and for the defaults or misfeasances in office of any such deputy, whether in the lifetime of the clerk or after his death, the clerk, and his estate, and the sureties on his official bond shall be liable; and his executor or administrator shall have such remedy for any such defaults or misfeasances committed after his death as the clerk would be entitled to if the same had occurred in his lifetime. (*36 Stat. L., 1153.*)

The only change in this section consists in the substitution of the word "on" for "in" after the word "sureties" in the second sentence.

Records of the old court of appeals.

R. S., s. 679.

SEC. 222. The records and proceedings of the Court of Appeals, appointed previous to the adoption of the present Constitution, shall be kept in the office of the clerk of the Supreme Court, who shall give copies thereof to any person requiring and paying for them, in the manner provided by law for giving copies of the records and proceedings of the Supreme Court; and such copies shall have like faith and credit with all other proceedings of said court. (*36 Stat. L., 1153.*)

This section reenacts existing law.

Tables of fees.

3 Mar., 1883, 22 Stat. L., 631, c. 143; 1 Supp., 421.

SEC. 223. The Supreme Court is authorized and empowered to prepare the tables of fees to be charged by the clerk thereof. (*36 Stat. L., 1153.*)

The executed portion of the provision revised in this section is omitted. The only other changes consist in dropping the words "that" and "hereby" in the first line of the section.

Marshal of the Supreme Court.

R. S., s. 680.

SEC. 224. The marshal is entitled to receive a salary at the rate of four thousand five hundred dollars a year. He shall attend the court at its sessions; shall serve and execute all process and orders issuing from it, or made by the Chief Justice or an associate justice in pursuance of law; and shall take charge of all property of the United States used by the court or its members. With the approval of the Chief Justice he may appoint assistants and messengers to attend the court, with the compensation allowed to officers of the House of Representatives of similar grade. (*36 Stat. L., 1153.*)

Assistants.

Except for increasing the salary of the marshal from $3,500 to $4,500 this section is a reenactment of existing law.

Duties of the reporter.

R. S., s. 681.
12 Feb., 1889, 25 Stat. L., 661, c. 135, s. 2; 1 Supp., 642.
1 July, 1902, 32 Stat. L., 631, c. 1355, s. 3.

SEC. 225. The reporter shall cause the decisions of the Supreme Court to be printed and published within eight months after they are made; and within the same time he shall deliver three hundred copies of the volumes of said reports to the Attorney-General. The reporter shall, in any year when he is so directed by the court, cause to be printed and published a second volume of said decisions, of which he shall deliver a like number of copies in like manner and time. (*36 Stat. L., 1153.*)

This section states what was existing law, although some changes have been made in the language employed. The words "made during his office" are omitted as redundant, and in the second sentence the words "reporter" and "like number" are inserted to avoid repetition of similar language.

Reporter's salary and allowances.

R. S., s. 682.
5 Aug., 1882, 22 Stat. L., 254, c. 389; 1 Supp., 374.
12 Feb., 1889, 25 Stat. L., 661, c. 135, s. 2; 1 Supp., 642.

SEC. 226. The reporter shall be entitled to receive from the Treasury an annual salary of four thousand five hundred dollars when his report of said decisions constitutes one volume, and an additional sum of one thousand two hundred dollars when, by direction of the court, he causes to be printed and published in any year a second volume; and said reporter shall be annually entitled to clerk hire in the sum of one thousand two hundred dollars, and to office rent, stationery, and contingent expenses in the sum of six hundred dollars: *Provided*, That the volumes of the decisions of the court heretofore published shall be furnished by the reporter to the public at a sum not exceeding two dollars per volume, and those hereafter published at a sum not exceeding one dollar and seventy-five cents per volume; and the number of volumes now required to be delivered to the Attorney-General shall be furnished by the reporter without any charge therefor. Said salary and compensation, respectively, shall be paid only when he causes such decisions to be printed, published, and delivered within the time and in the manner prescribed by law, and upon the condition that the volumes of said reports shall be sold

Price of volumes.

Free copies.

Conditions.

by him to the public for a price not exceeding one dollar and seventy-five cents a volume. (*36 Stat. L., 1153.*)

This section states what was existing law, with such changes as were required for purposes of revision.

Distribution of reports and digests.

R. S., s. 683.
12 Feb., 1889, 25 Stat. L., 661, c. 135, s. 2; 1 Supp., 642.
1 July, 1902, 32 Stat. L., 630, c. 1355.

SEC. 227. The Attorney-General shall distribute copies of the Supreme Court reports, as follows: To the President, the justices of the Supreme Court, the judges of the Commerce Court, the judges of the Court of Customs Appeals, the judges of the circuit courts of appeals, the judges of the district courts, the judges of the Court of Claims, the judges of the Court of Appeals and of the Supreme Court of the District of Columbia, the judges of the several Territorial courts, the Secretary of State, the Secretary of the Treasury, the Secretary of War, the Secretary of the Navy, the Secretary of the Interior, the Postmaster-General, the Attorney-General, the Secretary of Agriculture, the Secretary of Commerce and Labor, the Solicitor-General, the Assistant to the Attorney-General, each Assistant Attorney-General, each United States district attorney, each Assistant Secretary of each Executive Department, the Assistant Postmasters-General, the Secretary of the Senate for the use of the Senate, the Clerk of the House of Representatives for the use of the House of Representatives, the Governors of the Territories, the Solicitor for the Department of State, the Treasurer of the United States, the Solicitor of the Treasury, the Register of the Treasury, the Comptroller of the Treasury, the Comptroller of the Currency, the Commissioner of Internal Revenue, the Director of the Mint, each of the six Auditors in the Treasury Department, the Judge-Advocate-General, War Department, the Paymaster-General, War Department, the Judge-Advocate-General, Navy Department, the Commissioner of Indian Affairs, the Commissioner of Pensions, the Commissioner of the General Land Office, the Commissioner of Patents, the Commissioner of Education, the Commissioner of Labor, the Commissioner of Navigation, the Commissioner of Corporations, the Commissioner General of Immigration, the Chief of the Bureau of Manufactures, the Director of the Geological Survey, the Director of the Census, the Forester, Department of Agriculture, the Purchasing Agent, Post-Office Department, the Interstate Commerce Commission, the Clerk of the Supreme Court of the United States, the Marshal of the Supreme Court of the United States, the Attorney for the District of Columbia, the Naval Academy at Annapolis, the Military Academy at West Point, and the heads of such other executive offices as may be provided by law, of equal grade with any of said offices, each one copy; to the Law Library of the Supreme Court, twenty-five copies; to the Law Library of the Department of the Interior, two copies; to the Law Library of the Department of Justice, two copies; to the Secretary of the Senate for the use of the committees of the Senate, twenty-five copies; to the Clerk of the House of Representatives for the use of the committees of the House, thirty copies; to the Marshal of the Supreme Court of the United States, as custodian of the public property used by the court, for the use of the justices thereof in the conference room, robing room, and court room, three copies; to the Secretary of War for the use of the proper courts and officers of the Philippine Islands and for the headquarters of military departments in the United States, twelve copies; and to each of the places where district courts of the United States are now holden, including Hawaii, and Porto Rico, one copy. He shall also distribute one complete set of said reports, and one set of the digests thereof, to such executive officers as are entitled to receive said reports under this section and have not already received them, to each United States judge and to each United States district attorney who has not received a set, to each of the places where district courts are now

held to which said reports have not been distributed, and to each of the places at which a district court may hereafter be held, the edition of said reports and digests to be selected by the judge or officer receiving them. No distribution of reports and digests under this section shall be made to any place where the court is held in a building not owned by the United States, unless there be at such place a United States officer to whose responsible custody they can be committed. The clerks of said courts (except the Supreme Court) shall in all cases keep said reports and digests for the use of the courts and of the officers thereof. Such reports and digests shall remain the property of the United States, and shall be preserved by the officers above named and by them turned over to their successors in office. (*36 Stat. L., 1154.*)

This section is drawn from the three separate acts above cited, and sets out in detail the officers to whom copies of the reports of decisions of the Supreme Court, and of the digest thereof, were furnished under the existing law.

Additional reports and digests; limitation upon cost; estimates to be submitted to Congress annually.

1 July, 1902, 32 Stat. L., 631, c. 1355, ss. 3, 4, 6.

SEC. 228. The publishers of the decisions of the Supreme Court shall deliver to the Attorney-General, in addition to the three hundred copies delivered by the reporter, such number of copies of each report heretofore published, as the Attorney-General may require, for which he shall pay not more than two dollars per volume, and such number of copies of each report hereafter published as he may require, for which he shall pay not more than one dollar and seventy-five cents per volume. The Attorney-General shall include in his annual estimates submitted to Congress, an estimate for the current volumes of such reports, and also for the additional sets of reports and digests required for distribution under the section last preceding. (*36 Stat. L., 1155.*)

Estimates.

Under the act of February 12, 1889 (1 Supp., 642), the court reporter was required to furnish the Secretary of the Interior, in addition to the number "heretofore required by law" (300 copies; Rev. Stat., 3681) 76 copies, at not exceeding $2 per volume, beginning with volume 123. The act of July 1, 1902. (32 Stat., 630), required the publishers to furnish the Secretary 104 copies, in addition to 300 to be furnished by the reporter; and further imposed upon them the duty of furnishing the 76 copies theretofore, by the act of 1889, required to be furnished by the reporter, at a cost not to exceed $2 per volume. The law was changed by substituting the Attorney General for the Secretary of the Interior.

Distribution of Federal Reporter, etc., and digests.

SEC. 229. The Attorney-General is authorized to procure complete sets of the Federal Reporter or, in his discretion, other publication containing the decisions of the circuit courts of appeals, circuit courts, and district courts, and digests thereof, and also future volumes of the same as issued, and distribute a copy of each such reports and digests to each place where a circuit court of appeals, or a district court, is now or may hereafter regularly be held, and to the Supreme Court of the United States, the Court of Claims, the Court of Customs Appeals, the Commerce Court, the Court of Appeals, and the Supreme Court of the District of Columbia, the Attorney-General, the Solicitor-General, the Solicitor of the Treasury, the Assistant Attorney-General for the Department of the Interior, the Commissioner of Patents, and the Interstate Commerce Commission; and to the Secretary of the Senate, for the use of the Senate, and to the Clerk of the House of Representatives, for the use of the House of Representatives, not more than three sets each. Whenever any such court room, office, or officer shall have a partial or complete set of any such reports, or digests, already purchased or owned by the United States, the Attorney-General shall distribute to such court room, office, or officer only sufficient volumes to make a complete set thereof. No distribution of reports or digests under this section shall be made to any place where the court is held in a building not owned by the United States, unless there be at such place a

Completion of sets.

Condition.

Preservation.

United States officer to whose responsible custody they can be committed. The clerks of the courts (except the Supreme Court) to which the reports and digests are distributed under this section, shall keep such reports and digests for the use of the courts and the officers thereof. All reports and digests distributed under the provisions of this section shall be and remain the property of the United States and, before distribution, shall be plainly marked on their covers with the words "The Property of the United States," and shall be transmitted by the officers receiving them to their successors in office. Not to exceed two dollars per volume shall be paid for the back and current volumes of the Federal Reporter or other publication purchased under the provisions of this section, and not to exceed five dollars per volume for the digest, the said money to be disbursed under the direction of the Attorney-General; and the Attorney-General shall include in his annual estimates submitted to Congress, an estimate for the back and current volumes of such reports and digests, the distribution of which is provided for in this section. (*36 Stat. L., 1155.*)

Price for volumes.

Estimates.

This section is new legislation. See Cong. Record, 61st Congress, 3d session, pp. 3762, 4000.

Terms.

R. S., s. 684.

SEC. 230. The Supreme Court shall hold at the seat of government, one term annually, commencing on the second Monday in October, and such adjourned or special terms as it may find necessary for the dispatch of business. (*36 Stat. L., 1156.*)

Except for the omission of an obsolete part of the section, no change was made in the law.

Adjournments for want of a quorum.

R. S., s. 685.

SEC. 231. If, at any session of the Supreme Court, a quorum does not attend on the day appointed for holding it, the justices who do attend may adjourn the court from day to day for twenty days after said appointed time, unless there be sooner a quorum. If a quorum does not attend within said twenty days, the business of the court shall be continued over till the next appointed session; and if, during a term, after a quorum has assembled, less than that number attend on any day, the justices attending may adjourn the court from day to day until there is a quorum, or may adjourn without day. (*36 Stat. L., 1156.*)

Continuance.

This section is a reenactment of existing law.

Certain orders made by less than a quorum.

R. S., s. 686.

SEC. 232. The justices attending at any term, when less than a quorum is present, may, within the twenty days mentioned in the preceding section, make all necessary orders touching any suit, proceeding, or process, depending in or returned to the court, preparatory to the hearing, trial, or decision thereof. (*36 Stat. L., 1156.*)

This section made no change in the law.

Original jurisdiction.

R. S., s. 687.

SEC. 233. The Supreme Court shall have exclusive jurisdiction of all controversies of a civil nature where a State is a party, except between a State and its citizens, or between a State and citizens of other States, or aliens, in which latter case it shall have original, but not exclusive, jurisdiction. And it shall have exclusively all such jurisdiction of suits or proceedings against ambassadors or other public ministers, or their domestics or domestic servants, as a court of law can have consistently with the law of nations; and original, but not exclusive, jurisdiction, of all suits brought by ambassadors, or other public ministers, or in which a consul or vice-consul is a party. (*36 Stat. L., 1156.*)

Ambassadors, etc.

This section is a reenactment of the existing law.

ORIGINAL JURISDICTION.

Original jurisdiction of the Supreme Court is confined to the cases specified by the Constitution, and Congress cannot enlarge or restrict it. Muskrat *v.*

U. S., 219 U. S., 352; B. & O. R. R. *v.* Interstate Commerce Com., 215 U. S., 224; Marbury *v.* Madison, 1 Cranch, 137. "The question of jurisdiction precedes any inquiry into the merits." Oregon *v.* Hitchcock, 202 U. S., 68. "The jurisdiction is limited and manifestly intended to be sparingly exercised, and should not be expanded by construction." California *v.* Southern Pacific Co., 157 U. S., 261.

SUITS WHERE A STATE IS A PARTY.

The original jurisdiction of the Supreme Court "in cases between a State and citizens of another State rests upon the character of the parties and not at all upon the nature of the case." California *v.* Southern Pacific Co., 157 U. S., 263. "By the Constitution and according to the statute this court has exclusive jurisdiction of all controversies of a civil nature where a State is a party, but not of controversies between a State and its own citizens, and original but not exclusive jurisdiction of controversies between a State and citizens of another State or aliens." Idem, 258. See also Louisiana *v.* Texas, 176 U. S., 1. This section does not authorize a suit by a State against the United States, U. S. *v.* Louisiana, 123 U. S., 36. "We cannot assume that the framers of the Constitution, while extending the judicial power of the United States to controversies between two or more States of the Union, and between a State of the Union and foreign States, intended to exempt a State altogether from suit by the General Government. They could not have overlooked the possibility that controversies, capable of judicial solution, might arise between the United States and some of the States, and that the permanence of the Union might be endangered if to some tribunal was not entrusted the power to determine them according to the recognized principles of law. U. S. *v.* Texas, 143 U. S., 644. See also U. S. *v.* Michigan, 190 U. S., 379.

SUITS AGAINST AMBASSADORS, CONSULS, ETC.

The Supreme Court has said that the original jurisdiction of that court, "of cases in which a consul or vice-consul is a party, is not necessarily exclusive" because of the constitutional grant of original jurisdiction in that class of cases. Bors *v.* Preston, 111 U. S., 256. See also Pooley *v.* Luco, 76 Fed., 146.

Writs of prohibition and mandamus.

R. S., s. 688.

SEC. 234. The Supreme Court shall have power to issue writs of prohibition *to* the district courts, when proceeding as courts of admiralty and maritime jurisdiction; and writs of mandamus, in cases warranted by the principles and usages of law, to any courts appointed under the authority of the United States, or to persons holding office under the authority of the United States, where a State, or an ambassador, or other public minister, or a consul, or vice-consul is a party. (*36 Stat. L., 1156.*)

The only change made in this section is in the substitution of the word "to" after the word "prohibition" for the word "in." Writs of prohibition run *to* and not *in* the district courts.

The Supreme Court cannot grant prohibition or mandamus in cases over which that court possesses neither original nor appellate jurisdiction. In re Massachusetts, 197 U. S., 482; In re Glaser, 198 U. S., 171. The writ of prohibition provided for by this section "is the common law writ, which lies to a court of admiralty only when that court is acting in excess of, or is taking cognizance of matter not arising within, its jurisdiction. Its office is to prevent an unlawful assumption of jurisdiction, and not to correct mere errors and irregularities." In re Cooper, 143 U. S., 495. The writ will not issue after the cause is ended. Ex parte Joins, 191 U. S., 93. That mandamus is not a writ of right, see Turner *v.* Fisher, 222 U. S., 204.

"Repeated decisions of this court have established the rule that this court has power to issue a mandamus, in the exercise of its appellate jurisdiction, and that the writ will lie in a proper case to direct a subordinate Federal court to decide a pending cause." McClellan *v.* Carland, 217 U. S., 280. But not to control judicial discretion and judgment. American Const. Co. *v.* Jacksonville, etc., R. Co., 148 U. S., 372; Hudson *v.* Parker, 156 U. S., 277. Where another adequate remedy exists the writ will not issue. In re Atlantic City R. Co., 164 U. S., 633. And the writ of mandamus cannot be used to perform the office of an appeal or writ of error. In re Huguley M'fg. Co., 184 U. S., 301. See also Ex parte Harding, 219 U. S., 363, in which case the decisions are reviewed and harmonized.

As to the power over State courts, see In re Blake, 175 U. S., 114; In re Green, 141 U. S., 326.

Issues of fact.

R. S., s. 689.

SEC. 235. The trial of issues of fact in the Supreme Court, in all actions at law against citizens of the United States, shall be by jury. (*36 Stat. L., 1156.*)

This section made no change in the law.
See Capital Traction *v.* Hof, 174 U. S., 1.

Appellate jurisdiction.

R. S., s. 690.

SEC. 236. The Supreme Court shall have appellate jurisdiction in the cases hereinafter specially provided for. (*36 Stat. L., 1156.*)

This section is a reenactment, without change, of the existing law.

"The appellate jurisdiction in the Federal system is purely statutory." Heike *v.* U. S., 217 U. S., 428. "It is the essential criterion of appellate jurisdiction that it revises and corrects the proceedings in a cause already instituted and does not create that cause." Marbury *v.* Madison, 1 Cranch, 137, 175. "An appellate jurisdiction necessarily implies some judicial determination, some judgment, decree, or order of an inferior tribunal, from which an appeal has been taken." B. & O. R. R. *v.* Interstate Commerce Commission, 215 U. S., 225. It has always been held that the Supreme Court "can exercise no appellate jurisdiction, except in the cases, and in the manner and form, defined and prescribed by Congress." American Const. Co. *v.* Jacksonville Ry., 148 U. S., 378.

Writs of error from judgments and decrees of State courts.

R. S., s. 709.

Statute of State.

Denial of Federal right, etc.

Effect of writs.

SEC. 237. A final judgment or decree in any suit in the highest court of a State in which a decision in the suit could be had, where is drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision is against their validity; or where is drawn in question the validity of a statute of, or an authority exercised under any State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of their validity; or where any title, right, privilege, or immunity is claimed under the Constitution, or any treaty or statute of, or commission held or authority exercised under, the United States, and the decision is against the title, right, privilege, or immunity especially set up or claimed, by either party, under such Constitution, treaty, statute, commission, or authority, may be reexamined and reversed or affirmed in the Supreme Court upon a writ of error. The writ shall have the same effect as if the judgment or decree complained of had been rendered or passed in a court of the United States. The Supreme Court may reverse, modify, or affirm the judgment or decree of such State court, and may, at their discretion, award execution or remand the same to the court from which it was removed by the writ. (*36 Stat. L., 1156.*)

This section made no change in the law.

JURISDICTION GENERALLY.

"The jurisdiction of this court to review the proceedings of the State courts, as we have had frequent occasion to declare, is not that of a general reviewing court in error, but is limited to the specific instances of denials of Federal rights, whether those pertaining to the constitutionality of Federal or State statutes, or to certain rights, immunities and privileges of Federal origin, specially set up in the State court and denied by the rulings and judgment of that court." Waters-Pierce Oil Co. *v.* Texas, 212 U. S., 97. See also Appleby *v.* Buffalo, 221 U. S., 524; Murdock *v.* Memphis, 20 Wall., 635. The writ of error is the only remedy under this section. Dower *v.* Richards, 151 U. S., 658; Chicago, etc. R. Co. *v.* Swanger, 157 Fed., 789. Jurisdiction cannot be given by consent of the parties. Mills *v.* Brown, 16 Pet., 525. "The writ of error from this court to revise the judgment of a State court can only be maintained when within the purview" of this section. Capital Bank *v.* Cadiz Bank, 172 U. S., 425. Money value is not essential under this section. Holmes *v.* Jennison, 14 Pet., 540. And citizenship is immaterial. Barrington *v.* Missouri, 205 U. S., 483.

FINAL JUDGMENTS OF HIGHEST COURT.

"Whenever the highest court of a State, by any form of decision, affirms or denies the validity of any judgment of an inferior court over which it by law can exercise appellate authority, the jurisdiction of this court to review such decision, if it involve a Federal question, will upon a proper proceeding attach." Williams *v.* Bruffy, 102 U. S., 248. And the jurisdiction of the Supreme Court has been held to extend to the "final judgment of a subordinate State court denying a Federal right specially set up or claimed, if, under the local law, that court is the highest court of the State entitled to pass upon such claim of Federal right." Kentucky *v.* Powers, 201 U. S., 38.

FEDERAL QUESTIONS.

"A real, and not a fictitious, Federal question is essential to the jurisdiction of this court over the judgments of State courts. . . . The bare averment of

a Federal question is not in all cases sufficient. It must not be wholly without foundation. There must be at least color of ground for such averment, otherwise a Federal question might be set up in almost any case, and the jurisdiction of this court invoked simply for the purpose of delay." Wilson *v.* North Carolina, 169 U. S., 595. The jurisdiction of the Supreme Court may be invoked where the defendant claimed rights under a Federal statute, and that statute was referred to in and was an element of the decision of the State court. Hammond *v.* Whittredge, 204 U. S., 547. That the clause of the Constitution or the law of Congress must be specified, see New York Cent. R. Co. *v.* New York, 186 U. S., 269; Oxley Stave Co. *v.* Butler County, 166 U. S., 656.

How raised.—"Where a party to litigation in a State court insists, by way of objection to or requests for instructions, upon a construction of a statute of the United States which will lead, or, on possible findings of fact from the evidence may lead, to a judgment in his favor, and his claim in this respect, being duly set up, is denied by the highest court of the State, then the question thus raised may be reviewed in this court. The plain reason is that in all such cases he has claimed in the State court a right or immunity under a law of the United States and it has been denied to him. Jurisdiction so clearly warranted by the Constitution and so explicitly conferred by the act of Congress needs no justification . . . In no other manner can a uniform construction of the statute laws of the United States be secured, so that they shall have the same meaning and effect in all the States of the Union." St. Louis & Iron Mountain Ry. *v.* Taylor, 210 U. S., 293. See also Acme Harvester Co. *v.* Beekman Lumber Co., 222 U. S., 305; Mutual Life Ins. Co. *v.* McGrew, 188 U. S., 291.

Drawn in question.—As to when the validity of a statute or treaty is "drawn in question," see Kennard *v.* Nebraska, 186 U. S., 304; Scudder *v.* New York, 175 U. S., 32; U. S. ex rel. Champion Lumber Co. *v.* Fisher, 227 U. S., 445.

When raised.—As to when the question may be raised, see Forbes *v.* Virginia State Council, 216 U. S., 399. "Where the disposition of a Federal question was not necessary to the determination of the cause and the judgment is based on a distinct ground or grounds broad enough to sustain it, over which this court has no jurisdiction, the writ of error cannot be maintained." Rogers *v.* Jones, 214 U. S., 204. See also Leathe *v.* Thomas, 207 U. S., 93; California Powder Works *v.* Davis, 151 U. S., 393; Gaar, Scott & Co. *v.* Shannon, 223 U. S., 468.

QUESTIONS OF FACT.

On a writ of error the Supreme Court does not deal with the facts. King *v.* West Virginia, 216 U. S., 100. But that court "accepts the findings of the court of the State upon matters of fact as conclusive," and reviews only questions of Federal law within the jurisdiction conferred upon the Supreme Court. Waters-Pierce Oil Co. *v.* Texas, 212 U. S., 97; Chrisman *v.* Miller, 197 U. S., 319.

Appeals and writs of error from United States district courts.

3 Mar., 1891, 26 Stat. L., 827, c. 517, s. 5; 1 Supp., 903.
20 Jan., 1897, 29 Stat. L., 492, c. 68; 2 Supp., 541.
30 Apr., 1900, 31 Stat. L., 158, c. 339, s. 86; 2 Supp., 1159.

SEC. 238. Appeals and writs of error may be taken from the district courts, including the United States district court for Hawaii, direct to the Supreme Court in the following cases: In any case in which the jurisdiction of the court is in issue, in which case the question of jurisdiction alone shall be certified to the Supreme Court from the court below for decision; from the final sentences and decrees in prize causes; in any case that involves the construction or application of the Constitution of the United States; in any case in which the constitutionality of any law of the United States, or the validity or construction of any treaty made under its authority is drawn in question; and in any case in which the constitution or law of a State is claimed to be in contravention of the Constitution of the United States. (*36 Stat. L., 1157.*)

Section 86 of the organic act for Hawaii, as last amended (March 3, 1909; 35 Stat., 838), authorized the taking of appeals and writs of error from the United States District Court for that Territory direct to the Supreme Court, in the same manner and in the same classes of cases as from a circuit or district court of the United States. For this reason the district court for Hawaii is included with the district courts. It is specially mentioned from the fact that while it is called a United States district court, it is not a constitutional court. The special reference is to remove any doubt as to its inclusion.

The last clause of section 5 of the circuit court of appeals act, from which this section is drawn, is omitted, since it can now serve no useful purpose, the law referred to being set out in section 237 of this code.

This section changed the existing law by striking out the words "in cases of conviction of a capital crime," the effect being to take from the Supreme Court jurisdiction in capital cases, and to confer the former jurisdiction of that court upon the circuit courts of appeals.

That only final judgments are reviewable, see Heike *v.* U. S., 217 U. S., 423, 429, where it is said: "It may, therefore, be regarded as the settled practice of this court that a case cannot be brought here by piecemeal, and is only to be reviewed here after final judgment by direct appeal or writ of error in a limited class of cases under section 5 of the court of appeals act." . . . "A decree is final for the purposes of an appeal to this court when it terminates the litigation between the parties on the merits of the case and leaves nothing to be done but to enforce by execution what has been determined."

"The fundamental question of jurisdiction, first, of this court, and then of the court from which the record comes, presents itself on every writ of error or appeal, and must be answered by the court, whether propounded by counsel or not." Defiance Water Co. *v.* Defiance, 191 U. S., 194.

The nature of the case, and not the amount in dispute, is the test of the appellate jurisdiction of the Supreme Court from the district courts. The Paquete Habana, 175 U. S., 681.

JURISDICTION OF COURT IN ISSUE.

"The question of jurisdiction which the statute permits to be certified to this court directly must be one involving the jurisdiction of the circuit court as a Federal court, and not simply its general authority as a judicial tribunal to proceed in harmony with established rules of practice governing courts of concurrent jurisdiction as between each other." Louisville Trust Co. *v.* Knott, 191 U. S., 233; Fore River Shipbuilding Co. *v.* Hagg, 219 U. S., 175. In United States *v.* Jahn, 155 U. S., 109, it was said that this "act was passed to facilitate the prompt disposition of cases in this court and to relieve it from the oppressive burden of general litigation." The court said: "The provision that any case in which the question of jurisdiction is in issue may be taken directly to this court, necessarily extends to other cases than those in which the final judgment rests on the ground of want of jurisdiction, for in them that would be the sole question, and the certificate, though requisite to our jurisdiction under the statute, would not be in itself essential, however valuable in the interest of brevity of record. But in such other cases, the requirement that the question of jurisdiction alone should be certified for decision was intended to operate as a limitation upon the jurisdiction of this court of the entire case and of all questions involved in it, a jurisdiction which can be exercised in any other class of cases taken directly to this court under section five. See also Herndon-Carter Co. *v.* Norris & Co., 224 U. S., 491. In this class of cases the jurisdiction of the Supreme Court is exclusive. U. S. *v.* Larkin, 208 U. S., 333. The writ of *habeas corpus* cannot perform the office of a writ of error. Wright *v.* Henkel, 190 U. S., 57.

PRIZE CASES.

Under the Constitution, the Supreme Court can exercise only appellate jurisdiction in this class of cases. The Alicia, 7 Wall., 573. In The Paquete Habana, 175 U. S., 686, it was said that the act of 1891 manifests the intention of Congress to cover the whole subject of the appellate jurisdiction from the district and circuit courts of the United States; and as part of the new scheme to confer upon the Supreme Court "jurisdiction of appeals from all final sentences and decrees in prize causes, without regard to the amount in dispute, and without any certificate of the district judge as to the importance of the particular case."

CASES INVOLVING THE CONSTRUCTION OF THE CONSTITUTION.

"When a suit does not really and substantially involve a dispute or controversy as to the effect or construction of the Constitution or laws of the United States, upon the determination of which the result depends, it is not a suit arising under the Constitution or laws. And it must appear on the record, by a statement in legal and logical form, such as is required by good pleading, that the suit is one which does really and substantially involve a dispute or controversy as to a right which depends on the construction of some law or treaty of the United States, before jurisdiction can be maintained on this ground." Defiance Water Co. *v.* Defiance, 191 U. S., 191. See also Cincinnati, etc., R. Co. *v.* Thiebaud, 177 U. S., 615; Paraiso *v.* U. S., 207 U. S., 368; Spencer *v.* Duplan Silk Co., 191 U. S., 526. "In order to bring a case within this clause of the act, the circuit court must have construed the Constitution, or applied it to the case, or must, at least, have been requested and have declined or omitted to construe or apply it." Cornell *v.* Green, 163 U. S., 78. See also Rakes *v.* U. S., 212 U. S., 58. That the denial of a writ of *habeas corpus* involved the Constitution, see Dimmick *v.* Tompkins, 194 U. S., 540.

VALIDITY OF LAW OR TREATY OR CONSTRUCTION OF TREATY OF UNITED STATES.

The rule applicable to the question of validity or construction of a treaty is thus stated: "Some right, title, privilege or immunity dependent on the treaty must be so set up or claimed as to require the circuit court to pass on the question of validity or construction in disposing of the right asserted." Muse *v.* Arlington Hotel Co., 168 U. S., 435. The construction of the treaty must be "really and substantially" involved, and not merely incidentally or remotely. Sloan *v.* U. S., 193 U. S., 620. Where the construction of an extradition treaty was material in a *habeas corpus* proceeding, the Supreme Court held that it had jurisdicion of a direct appeal from a circuit court. "The construction of the treaties was none the less drawn in question because it became necessary or appropriate for the court below also to construe the acts of Congress passed to carry their provisions into effect." Pettit *v.* Walshe, 194 U. S., 216. See also Horner *v.* U. S., 143 U. S., 576. But where the case requires only a *construction* of an act of Congress, and the constitutionality is not questioned, it can not be taken directly to the Supreme Court under this section. Spreckels Sugar Ref. Co. *v.* McClain, 192 U. S., 407. But see Altman & Co. *v.* U. S., 224 U. S., 583.

CONSTITUTION OR LAW OF STATE CONTRAVENING FEDERAL CONSTITUTION.

"The mere construction of a State statute does not of itself present a Federal question. . . . To justify a holding that the application of the Federal Constitution is involved there should be a question as to the relation between some constitutional provision and the State statute." Knop *v.* Monongahela Coal Co., 211 U. S., 485. Nor is a reference to the Constitution "to strengthen objections to a particular construction, or the pursuit of a certain course of conduct," sufficient to invoke jurisdiction. Arbuckle *v.* Blackburn, 191 U. S., 415. In a case involving a State probate law it was said that the "mere fact that a constitutional question is alleged does not suffice to give us jurisdiction to review by direct appeal, if such question is unsubstantial, and so devoid of merit as to be clearly frivolous." Goodrich *v.* Ferris, 214 U. S., 79.

Circuit court of appeals may certify questions to Supreme Court for instruction.

3 Mar., 1891, 26 Stat. L., 828, c. 517, s. 6; 1 Supp., 903.

SEC. 239. In any case within its appellate jurisdiction, as defined in section one hundred and twenty-eight, the circuit court of appeals at any time may certify to the Supreme Court of the United States any questions or propositions of law concerning which it desires the instruction of that court for its proper decision; and thereupon the Supreme Court may either give its instruction on the questions and propositions certified to it, which shall be binding upon the circuit court of appeals in such case, or it may require that the whole record and cause be sent up to it for its consideration, and thereupon shall decide the whole matter in controversy in the same manner as if it had been brought there for review by writ of error or appeal. (*36 Stat. L., 1157.*)

Decision upon whole record.

The appellate jurisdiction of the circuit courts of appeals is to be determined by a reference to section 128 of this code, in connection with section 238. This section represents that portion of section 6 of the circuit court of appeals act which authorizes the certification of questions to the Supreme Court, and recites the action which may be taken by the Supreme Court in case of such certification. The section states what was existing law upon the subject.

NATURE OF QUESTIONS CERTIFIED.

In the case of B. & O. R. R. *v.* Interstate Commerce Commission, 215 U. S., 221, it was said that certificates by the circuit courts of appeals, of questions of law upon which the advice of the Supreme Court is sought, are "governed by the same rules as were formerly applied to certificates of division." In that case Mr. Chief Justice Fuller said: "It has been established by repeated decisions that questions certified to this court upon a division of opinion must be distinct points of law clearly stated so that they can be distinctly answered without regard to other issues of law or of fact; and not questions of fact or of mixed law and fact involving inferences of fact from particular facts stated in the certificates; nor yet the whole case even if divided into several points." Citing Jewell *v.* Knight, 123 U. S., 426, 433, in which case it was said that the questions should not be "such as involve or imply conclusions or judgment by the court upon the weight or effect of testimony or facts adduced in the cause." (p. 432.)

The Circuit Court of Appeals cannot certify the whole case. Del Monte Mining, etc., Co. *v.* Last Chance, etc., Mining Co., 171 U. S., 55; Chicago, B. & Q. Ry. Co. *v.* Williams, 205 U S, 444; B & O. R. R. *v.* Interstate Commerce Commission, 215 U. S., 216.

As to the form of the certificate, see Graver *v.* Faurot, 162 U. S., 435.

Under this section it is competent for the Supreme Court to require a case to be certified, "whether its advice is requested or not, except those which may be brought here by appeal or writ of error." Lau Ow Bew *v.* U. S., 144 U. S., 58.

Where a question is certified to the Supreme Court and that court has required the whole record to be sent up, it devolved upon the Supreme Court to "decide the whole matter in controversy in the same manner as if it had been brought there for review by writ of error or appeal." Loewe *v.* Lawlor, 208 U. S., 274.

Certiorari to circuit court of appeals.

3 Mar., 1891, 26 Stat. L., 828, c. 517, s. 6; 1 Supp., 903.

SEC. 240. In any case, civil or criminal, in which the judgment or decree of the circuit court of appeals is made final by the provisions of this Title, it shall be competent for the Supreme Court to require, by certiorari or otherwise, upon the petition of any party thereto, any such case to be certified to the Supreme Court for its review and determination, with the same power and authority in the case as if it had been carried by appeal or writ of error to the Supreme Court. (*36 Stat. L., 1157.*)

This section was drawn from the circuit court of appeals act, and contains that provision thereof which authorizes the Supreme Court to require the certification to it of cases made final in the circuit court of appeals. Except for the insertion of the phrase "upon the petition of any party thereto;" and the phrase "by the provisions of this title," inserted for purposes of revision, this section states what was the existing law.

Cases made final in the circuit courts of appeals are covered in section 128 of this code.

PURPOSE OF THE STATUTE.

In commenting upon this provision, Mr. Justice Brewer said: "In order to guard against any injurious results which might flow from having nine appellate courts, acting independently of each other, power was given to this court to bring before it for decision by certiorari any case pending in either of those courts. In that way it was believed that uniformity of ruling might be secured, as well as the disposition of cases whose gravity and importance rendered the action of the tribunal of last resort peculiarly desirable, but the power of determining what cases should be brought up was vested in this court, and it was not intended to give to any one of the courts of appeal the right to avoid the responsibility cast upon it by statute by transmitting any case it saw fit to this court for decision." Warner *v.* New Orleans, 167 U. S., 474. See also Columbus Watch Co. *v.* Robbins, 148 U. S., 269.

"It is evident that it is solely questions of gravity and importance that the circuit court of appeals should certify to us for instruction; and that it is only when such questions are involved that the power of this court to require a case in which the judgment and decree of the circuit court of appeals is made final, to be certified, can be properly invoked." Lau Ow Bew, Petitioner, 141 U. S., 587; 144 U. S., 58; Forsyth *v.* Hammond, 166 U. S., 511. And it is a branch of the jurisdiction of the Supreme Court which "should be exercised sparingly and with great caution." American Construction Co. *v.* Jacksonville Ry., 148 U. S., 383; The Three Friends, 166 U. S., 1, 49; McClellan *v.* Carland, 217 U. S., 268, in which case it was said that the Supreme Court would "take the case as it is presented here upon the stipulated return to the writ of certiorari on the record as presented to the circuit court of appeals."

The power of the Supreme Court to issue writs of certiorari is not limited to this section, but may also be exercised under section 716, Revised Statutes, carried into section 262 of this code. See McClellan *v.* Carland, 217 U. S., 277.

Appeals and writs of error in other cases.

3 Mar., 1891, 26 Stat. L., 828, c. 517, s. 6; 1 Supp., 904.

SEC. 241. In any case in which the judgment or decree of the circuit court of appeals is not made final by the provisions of this Title, there shall be of right an appeal or writ of error to the Supreme Court of the United States where the matter in controversy shall exceed one thousand dollars, besides costs. (*36 Stat. L., 1157.*)

This section was also drawn from section 6 of the circuit court of appeals act, and is merely declaratory of what was existing law on the subject. The changes in phraseology were necessary for purposes of revision and in no manner change the law.

Where there is no amount in controversy an appeal will not lie to the Supreme Court. Whitney *v.* Dick, 202 U. S., 135; McClellan *v.* Carland, 217 U. S., 278. "The bill need not state, in so many words, that a certain amount exceeding one thousand dollars is in controversy in order that this court may have jurisdiction on appeal. The statutory amount must as a matter of fact be in controversy, yet that fact may appear by affidavit after the appeal is taken to this court." U. S. *v.* Freight Assn., 166 U. S., 310. It was the intention of Congress that jurisdiction might be entertained by the Supreme Court to pass upon the jurisdiction of the circuit courts of appeals when involving the question of the finality of its judgment under section 6, of the circuit court of appeals act. Aztec Mining Co. *v.* Ripley, 151 U. S., 81. The provision applies only to final judgments in the circuit courts of appeals. German Nat. Bank *v.* Speckert, 181 U. S., 405.

As to the jurisdiction of the Supreme Court in a trademark case involving the question of unfair competition, see Standard Paint Co. *v.* Trinidad Asphalt Co., 220 U. S., 446.

Appeals from Court of Claims.

R. S., s. 707.
3 Mar., 1887, 24 Stat. L., 507, c. 359, s. 9; 1 Supp., 561.

SEC. 242. An appeal to the Supreme Court shall be allowed on behalf of the United States, from all judgments of the Court of Claims adverse to the United States, and on behalf of the plaintiff in any case where the amount in controversy exceeds three thousand dollars, or where his claim is forfeited to the United States by the judgment of said court as provided in section one hundred and seventy-two. (*36 Stat. L., 1157.*)

The only change made in this section consists in the substitution of "section one hundred and seventy-two" for "one thousand and eighty-nine," as that reference in section 707, Revised Statutes, was a mistake. It should have been to section 1086, which is revised in section 172 of this code. No change in the law was made by this change in language.

See section 181 of this code in connection with this provision.

In Vigo's case, 21 Wall., 650, the Supreme Court said that this section gave to the United States "the right of appeal from the adverse judgment of the Court of Claims in all cases where that court is required by any general or special law to take jurisdiction of a claim made against the United States and act judicially in its determination." An appeal can be taken by the United States without regard to the amount involved. U. S. *v.* Davis, 131 U. S., 36. A *pro forma* judgment cannot be rendered against the United States for the purpose of an appeal. U. S. *v.* Gleeson, 124 U. S., 255.

Where both parties appealed from a judgment in excess of the jurisdictional amount, the claimant may avail himself of anything in the case which shows that the judgment appealed from was not for too large a sum. U. S. *v.* Mosby, 133 U. S., 273. As to questions of amendment and finality of judgment, see U. S. *v.* St. Louis, etc., Trans. Co., 184 U. S., 247.

Forfeiture on grounds of fraud, see Furay *v.* U. S., 34 Ct. Cl., 171; La Abra Silver Mining Co. *v.* U. S., 175 U. S., 461.

Time and manner of appeals from the Court of Claims.

R. S., s. 708.

SEC. 243. All appeals from the Court of Claims shall be taken within ninety days after the judgment is rendered, and shall be allowed under such regulations as the Supreme Court may direct. (*36 Stat. L., 1157.*)

This section is a reenactment, without change, of what was the existing law. In connection with this section, see section 181 of this code, p. 97.

On the question of the form of the appeal, the Supreme Court has said it is sufficient to indicate the intention to exercise that right where "it is addressed to the court, refers properly to the case, claims an appeal, and calls upon the court to take the action which rules prescribed by the Supreme Court require of it." U. S. *v.* Adams, 6 Wall., 108. As to the general rule respecting final judgments for purposes of appeal, see U. S. *v.* Ellicott, 223 U. S., 539.

Writs of error and appeals from supreme court of and United States district court for Porto Rico.

12 Apr., 1900, 31 Stat. L., 85, c. 191, s. 35; 2 Supp., 1136.

Federal questions.

Value in dispute.

SEC. 244. Writs of error and appeals from the final judgments and decrees of the supreme court of, and the United States district court for, Porto Rico, may be taken and prosecuted to the Supreme Court of the United States, in any case wherein is involved the validity of any copyright, or in which is drawn in question the validity of a treaty or statute of, or authority exercised under, the United States, or wherein the Constitution of the United States, or a treaty thereof, or an Act of Congress is brought in question and the right claimed thereunder is denied, without regard to the sum or value of the matter in dispute; and in all other cases in which the sum or value of the matter in dispute, exclusive of costs, to be ascertained by the

oath of either party or of other competent witnesses, exceeds the sum or value of five thousand dollars. Such writs of error and appeals shall be taken within the same time, in the same manner, and under the same regulations as writs of error and appeals are taken to the Supreme Court of the United States from the district courts. (*36 Stat. L., 1157.*)

Section 35 of the organic act for Porto Rico provided that appeals and writs of error may be taken from the Supreme Court of and the United States District Court for Porto Rico to the Supreme Court of the United States, in the same class of cases as from the Territories of the United States; and in addition, in all cases where the Constitution of the United States, or a treaty thereof, or an act of Congress is brought in question and the right claimed thereunder denied. This provision has been changed to conform to the same regulations as are applicable to the District Courts.

CASES REVIEWABLE.

"A review of the final judgment of the District Court of the United States for Porto Rico is not restricted to those cases in which the Constitution or a treaty of the United States or an act of Congress is brought in question and the right claimed under it denied. . . . There may be cases—certainly civil cases—in the United States District Court for Porto Rico that do not involve any question arising under the Constitution, or a treaty, or an act of Congress; and yet if the case be one which, if determined in a Supreme Court of one of the Territories of the United States, could be brought here for reexamination, the final judgment could be reviewed by this court, although no right of a distinctly Federal nature was involved." Amado *v.* U. S., 195 U. S., 175. Jurisdiction can not be invoked where the Federal question raised is frivolous, nor where the record does not disclose "the semblance of the assertion or denial of a right under the Constitution." Kent *v.* Porto Rico, 207 U. S., 113.

QUESTIONS REVIEWABLE.

The Supreme Court will not consider questions not presented in the bill or raised in the lower court. Rodriguez *v.* Vivoni, 201 U. S., 371. But the court will of its own motion "inquire into the jurisdiction which it has and as well that of the court below, without any special exception being taken." Perez *v.* Fernandez, 202 U. S., 100. The review of the Supreme Court is confined to questions of law presented by the record, and does not include the facts. Garzot *v.* de Rubio, 209 U. S., 283; Gonzales *v.* Buist, 224 U. S., 126.

JURISDICTIONAL AMOUNT.

See Garozzi *v.* Dastas, 204 U. S., 64; Cuebas *v.* Cuebas, 223 U. S., 376; Royal Insurance Co. *v.* Martin, 192 U. S., 149.

Writs of error and appeals from the supreme courts of Arizona and New Mexico.

R. S., s. 702.
3 Mar., 1885, 22 Stat. L., 444, c. 355, ss. 1, 2; 1 Supp., 485.

Value in dispute.

SEC. 245. Writs of error and appeals from the final judgments and decrees of the supreme courts of the Territories of Arizona and New Mexico may be taken and prosecuted to the Supreme Court of the United States in any case wherein is involved the validity of any copyright, or in which is drawn in question the validity of a treaty or statute of, or authority exercised under, the United States, without regard to the sum or value of the matter in dispute; and in all other cases in which the sum or value of the matter in dispute, exclusive of costs, to be ascertained by the oath of either party or of other competent witnesses, exceeds the sum or value of five thousand dollars. (*36 Stat. L., 1158.*)

In Simms *v.* Simms (175 U. S., 162, 166), the Supreme Court pointed out the classes of cases in which writs of error and appeals could be taken from the supreme courts of Arizona and New Mexico to the Supreme Court. The section was revised in accordance with the opinion of the Supreme Court in that case.
See section 249 of this code in connection with this section, p. 127.

CASES REVIEWABLE.

Speaking of the statutes from which this section is derived, the Supreme Court has said:

"It is clear from the express words of those enactments that this court may review the final judgment of the Supreme Court of one of the Territories of the United States in any case, without regard to the sum or value in dispute,

where the Constitution or a statute or treaty is brought in dispute, and in every other case whatever where the sum or value in dispute exceeds $5,000, exclusive of costs." Royal Ins. Co. *v.* Martin, 192 U. S., 159.

VALIDITY OF TREATY OR STATUTE.

"The validity of a statute is not drawn in question every time rights claimed under such statute are controverted, nor is the validity of an authority, every time an act done by such authority is disputed. The validity of a statute or the validity of an authority is drawn in question when the existence, or constitutionality, or legality of such statute or authority is denied, and the denial forms the subject of direct inquiry." Linford *v.* Ellison, 155 U. S., 508.

VALUE IN CONTROVERSY.

See Simms *v.* Simms, 175 U. S., 162, 167, where it is said that "the matter in dispute must have been money, or something the value of which can be estimated in money." See also Caffrey *v.* Oklahoma, 177 U. S., 346. Where the jurisdictional amount is sufficient the court may "inquire into all matters properly preserved in the record." American Pub. Co. *v.* Fisher, 166 U. S., 466.

Writs of error and appeals from the supreme court of Hawaii.

30 Apr., 1900, 31 Stat. L., 158, c. 339, s. 86; 2 Supp., 1159.
3 Mar., 1909, 35 Stat. L., 838, c. 269, s. 1.

SEC. 246. Writs of error and appeals from the final judgments and decrees of the supreme court of the Territory of Hawaii may be taken and prosecuted to the Supreme Court of the United States, within the same time, in the same manner, under the same regulations, and in the same classes of cases, in which writs of error and appeals from the final judgments and decrees of the highest court of a State in which a decision in the suit could be had, may be taken and prosecuted to the Supreme Court of the United States under the provisions of section two hundred and thirty-seven; and also in all cases wherein the amount involved, exclusive of costs, to be ascertained by the oath of either party or of other competent witnesses, exceeds the sum or value of five thousand dollars. (*36 Stat. L., 1158.*)

Value in dispute.

Section 86 of the organic act for Hawaii, as last amended (March 3, 1909; 35 Stat., 838), provided for the taking of appeals and writs of error from the Supreme Court of that Territory to the Supreme Court of the United States, in the same manner and in the same classes of cases, in which they may be taken to that court from the Supreme Court of a State; and also in all cases in which the amount involved exceeds $5,000. This section was so drawn as to state those facts, and was the existing law.

In connection with this provision see sections 128 and 238 of this code.

Federal questions must be distinctly raised by the record. Honolulu Transit Co. *v.* Wilder, 211 U. S., 145. Every allegation of a Federal question is not sufficient to give jurisdiction. "There must be a real, substantive question on which the case may be made to turn," that is, "a real and not a merely formal Federal question is essential to the jurisdiction of this court." Equitable Life Assur. Soc. *v.* Brown, 187 U. S., 311. In this case it was said that the jurisdiction of the Supreme Court to review judgments of the courts of the Territory of Hawaii "is more restricted than is the jurisdiction to review the judgments of the courts of other organized Territories, and is to be measured by the power conferred upon this court to review judgments of State courts."

See notes to section 237 of this code, p. 118.

Writs of error and appeals from district court for Alaska direct to Supreme Court in certain cases.

6 June, 1900, 31 Stat. L., 414, c. 786, s. 504; 2 Supp., 1289.

SEC. 247. Appeals and writs of error may be taken and prosecuted from final judgments and decrees of the district court for the district of Alaska or for any division thereof, direct to the Supreme Court of the United States, in the following cases: In prize cases; and in all cases which involve the construction or application of the Constitution of the United States, or in which the constitutionality of any law of the United States or the validity or construction of any treaty made under its authority is drawn in question, or in which the constitution or law of a State is claimed to be in contravention of the Constitution of the United States. Such writs of error and appeals shall be taken within the same time, in the same manner, and under the same regulations as writs of error and

appeals are taken from the district courts to the Supreme Court. (*36 Stat. L., 1158.*)

The cases in which writs of error and appeals could be taken from the District Court for Alaska to the Supreme Court were stated in section 202 of the Criminal Code for Alaska (2 Supp., 1061), and in section 504 of the Civil Code. Following the policy of divesting the Supreme Court of its appellate jurisdiction in capital cases, this section as revised was so modified as to vest appellate jurisdiction of that class of cases in the circuit court of appeals for the ninth circuit. (See section 134 of this code.) Excepting that change, the section states what was the existing law.

FEDERAL QUESTIONS.

Rasmussen *v.* U. S., 197 U. S., 516, in which it was held that the deprivation of the right of trial by jury raised a constitutional question.

See notes to section 238 of this code, p. 119.

Appeals and writs of error from the supreme court of the Philippine Islands.

1 July, 1902, 32 Stat. L., 695, c. 1369, s. 10.

SEC. 248. The Supreme Court of the United States shall have jurisdiction to review, revise, reverse, modify, or affirm the final judgments and decrees of the supreme court of the Philippine Islands in all actions, cases, causes, and proceedings now pending therein or hereafter determined thereby, in which the Constitution, or any statute, treaty, title, right, or privilege of the United States is involved, or in causes in which the value in controversy exceeds twenty-five thousand dollars, or in which the title or possession of real estate exceeding in value the sum of twenty-five thousand dollars, to be ascertained by the oath of either party or of other competent witnesses, is involved or brought in question; and such final judgments or decrees may and can be reviewed, revised, reversed, modified, or affirmed by said Supreme Court on appeal or writ of error by the party aggrieved, within the same time, in the same manner, under the same regulations, and by the same procedure, as far as applicable, as the final judgments and decrees of the district courts of the United States. (*36 Stat. L., 1158.*)

This section is a reenactment of what was existing law, except for the changes indicated below. The word "that" at the beginning of the section was omitted and the words "within the same time" inserted near the end of the section. By reason of the varied character of the courts of our territorial and insular possessions, it has been deemed best to insert this provision, not leaving it to each practitioner to solve the problem. The manner of procedure, so far as applicable, was to be employed in appellate proceedings from the circuit courts. As the circuit courts are abolished by section 289 of this code, the word "district" has been substituted for the word "circuit."

CASES INVOLVING THE CONSTITUTION.

Criminal cases involving constitutional questions: Dowdell *v.* U. S., 221 U. S., 325, right to face witnesses. Due process of law, Ong Chang Wing, 218 U. S., 272; Serra *v.* Mortiga, 204 U. S., 470. Former jeopardy, Grafton *v.* U. S., 206 U. S., 333. Trial by jury, Dorr *v.* U. S., 195 U. S., 138. Question of cruel and unusual punishments, Weems *v.* U. S., 217 U. S., 349. Imprisonment for debt, Freeman *v.* U. S., 217 U. S., 539.

INVOLVING STATUTE OR TREATY OF UNITED STATES.

Where the construction of the Organic Act for the Philippines is involved, the jurisdictional amount is not necessary. Reavis *v.* Fianza, 215 U. S., 16. Case involving treaty, Vilas *v.* Manila, 220 U. S., 345.

VALUE IN CONTROVERSY.

"The value of the matter in dispute in this court is the test of our jurisdiction." Martinez *v.* Inter. Banking Corp., 220 U. S., 221. The jurisdictional value must be shown by a preponderance of evidence. Enriquez *v.* Enriquez, 222 U. S., 127. That distinct judgments in favor of or against distinct parties can not be joined to give jurisdiction, see Tupino *v.* La Compania de Tabacos, 214 U. S., 268.

METHOD OF REVIEW.

The writ of error is the appropriate method under this section. Jover *v.* Insular Government, 221 U. S., 623.

SCOPE OF REVIEW.

Only questions of law are considered on a writ of error. Santos *v.* Roman Catholic Church, 212 U. S., 463. But when the courts below differ on the facts, they will be reviewed by the Supreme Court on appeal or writ of error. Strong *v.* Repide, 213 U. S., 419. "An appeal brings up questions of fact as well as of law, but upon a writ of error only questions of law apparent on the record can be considered, and there can be no inquiry whether there was error in dealing with questions of fact." Behn *v.* Campbell, 205 U. S., 407.

Appeals and writs of error when a Territory becomes a State.

R. S., s. 703.

SEC. 249. In all cases where the judgment or decree of any court of a Territory might be reviewed by the Supreme Court on writ of error or appeal, such writ of error or appeal may be taken, within the time and in the manner provided by law, notwithstanding such Territory has, after such judgment or decree, been admitted as a State; and the Supreme Court shall direct the mandate to such court as the nature of the writ of error or appeal requires. (*36 Stat. L., 1158.*)

This section reenacts, without change, what was existing law.

"The Territorial courts were the courts of the General Government, and the records in the custody of their clerks were the records of the Government, and it would seem to follow necessarily from the premises that no one could legally take possession or custody of the same without the assent, express or implied, of Congress." Freeborn *v.* Smith, 2 Wall., 173.

Appeals and writs of error from the court of appeals of the District of Columbia.

R. S., s. 705.
R. S. D. C., s. 846.
9 Feb., 1893, 27 Stat. L., 436, c. 74, s. 8; 2 Supp., 79.
3 Mar., 1901, 31 Stat. L., 1227, c. 854, s. 233; 2 Supp., 1595.

SEC. 250. Any final judgment or decree of the Court of Appeals of the District of Columbia may be reexamined and affirmed, reversed, or modified by the Supreme Court of the United States, upon writ of error or appeal, in the following cases:

First. In cases in which the jurisdiction of the trial court is in issue; but when any such case is not otherwise reviewable in said Supreme Court, then the question of jurisdiction alone shall be certified to said Supreme Court for decision.

Second. In prize cases.

Third. In cases involving the construction or application of the Constitution of the United States, or the constitutionality of any law of the United States, or the validity or construction of any treaty made under its authority.

Fourth. In cases in which the constitution, or any law of a State, is claimed to be in contravention of the Constitution of the United States.

Fifth. In cases in which the validity of any authority exercised under the United States, or the existence or scope of any power or duty of an officer of the United States is drawn in question.

Sixth. In cases in which the construction of any law of the United States is drawn in question by the defendant.

Except as provided in the next succeeding section, the judgments and decrees of said Court of Appeals shall be final in all cases arising under the patent laws, the copyright laws, the revenue laws, the criminal laws, and in admiralty cases; and, except as provided in the next succeeding section, the judgments and decrees of said Court of Appeals shall be final in all cases not reviewable as hereinbefore provided.

Writs of error and appeals shall be taken within the same time, in the same manner, and under the same regulations as writs of error and appeals are taken from the circuit courts of appeals to the Supreme Court of the United States. (*36 Stat. L., 1159.*)

Section 705, Revised Statutes, authorized the taking of appeals and writs of error from final judgments and decrees of the Supreme Court of the District

of Columbia to the Supreme Court of the United States—"In the same manner and under the same regulations as are provided in cases of writs of error on judgments, or appeals from decrees rendered in a circuit court."

Section 846 of the Revised Statutes (1875) of the District of Columbia, provided that—"Any final judgment, order, or decree of the Supreme Court of the District of Columbia may be reexamined and reversed or affirmed in the Supreme Court of the United States, upon writ of error or appeal, in the same cases and in like manner as provided by law in reference to final judgments, orders, and decrees of the circuit courts of the United States." In the Compiled Statutes of the District of Columbia, published in 1894, section 846, Revised Statutes, appears as section 43 of chapter 35, Title Judiciary.

These sections state the law upon the subject of appeals and writs of error at the time the act of February 9, 1893 (27 Stat., 434), establishing a court of appeals for the District of Columbia was passed.

That act authorized writs of error and appeals from the Supreme Court to the court of appeals, and from the latter court to the Supreme Court of the United States in certain instances (sec. 8), such writs of error and appeals to be taken—"In the same manner and under the same regulations as *heretofore* provided for in cases of writs of error on judgment or appeals from decrees rendered in the Supreme Court of the District of Columbia." Section 8 of the act of 1893 appears as section 233 of the District Code, adopted in 1901 (31 Stat., 1189), with but slight changes in phraseology; but the manner in which they are to be taken is stated in the same language as in section 8, except that the words "on February 9, 1893," are substituted for the word "heretofore."

From this review of the law it will be seen that the manner of taking writs of error and appeals from the court of appeals to the Supreme Court of the United States is the same as that by which they were taken from circuit courts of the United States to the Supreme Court.

Section 11 of the circuit court of appeals act (1 Supp., 905) provides that "All provisions of law now in force regulating the methods and system of review, through appeals and writs of error, shall regulate the methods and system of appeals and writs of error provided for in this act in respect of the circuit courts of appeals, * * *."

The effect of this provision was to continue the then existing method by which appeals and writs of error were taken from the circuit courts to the Supreme Court and make it applicable to the circuit courts of appeals.

In view of these facts, section 250 as revised correctly stated the law as to the procedure by which writs of error and appeals were taken from the court of appeals for the District of Columbia to the Supreme Court of the United States.

As to the "first," "second," "third," and "fourth" clauses, see notes to section 238 of this code, p. 119.

As to the "fifth" clause, see notes to section 237, p. 118. See also U. S. ex rel. Champion Lumber Co. *v.* Fisher, 227 U. S., 445.

As to decisions made final, see notes to section 128, p. 80.

As to appeals and writs of error, see notes to section 241, p. 122.

INDISCRIMINATE APPEALS PREVENTED.

In the case of American Security & Trust Co. *v.* District of Columbia, 224 U. S., 491, it was held that clause "sixth" of this section "should not be construed to apply to the purely local laws" of the District of Columbia. And in denying the applicability of this section to a suit for condemnation of land for a street extension, under a special act of Congress, Mr. Justice Holmes said: "Of course there is no doubt that the special act of Congress was in one sense a law of the United States. It well may be that it would fall within the meaning of the same words in the third clause of the same section: "Cases involving the constitutionality of any law of the United States." Parsons *v.* District of Columbia, 170 U. S., 45. But it needs no authority to show that the same phrase may have different meanings in different connections. Some reasons for strict construction apply here. We are entirely convinced that Congress intended to effect a substantial relief to this court from indiscriminate appeals where a sum above $5000 was involved, and to that end repealed the former act. (Citing cases.) But all cases in the District arise under acts of Congress and probably it would require little ingenuity to raise a question of construction in almost any one of them. If, then, the words have the meaning given them by the applicants the appellate jurisdiction of this court has been largely and irrationally increased. We believe Congress meant no such result."

On the former jurisdiction of the Supreme Court of cases from the Court of Appeals of the District of Columbia, see Chapman *v.* U. S., 164 U. S., 436, 446. See also In re Chapman, 166 U. S., 661.

Certiorari to court of appeals, District of Columbia.

3 Mar., 1897, 29 Stat. L., 692, c. 390; 2 Supp., 609.

SEC. 251. In any case in which the judgment or decree of said Court of Appeals is made final by the section last preceding, it shall be competent for the Supreme Court of the United States to require, by certiorari or otherwise, any such case to be certified to it for its review

and determination, with the same power and authority in the case as if it had been carried by writ of error or appeal to said Supreme Court. It shall also be competent for said Court of Appeals, in any case in which its judgment or decree is made final under the section last preceding, at any time to certify to the Supreme Court of the United States any questions or propositions of law concerning which it desires the instruction of that court for their proper decision; and thereupon the Supreme Court may either give its instruction on the questions and propositions certified to it, which shall be binding upon said Court of Appeals in such case, or it may require that the whole record and cause be sent up to it for its consideration, and thereupon shall decide the whole matter in controversy in the same manner as if it had been brought there for review by writ of error or appeal. (*36 Stat. L., 1159*).

3 Mar., 1901, 31 Stat. L., 1227, c. 854, s. 234; 2 Supp., 1595.

Certifying questions to Supreme Court.

Instructions.

The part of this section which authorizes certiorari by the Supreme Court was drawn from section 234 of the Code of Law for the District of Columbia (2 Supp., 1595), the last enactment upon the subject, and states what was existing law. The change in phraseology was necessary for purposes of revision, but made no change in the law. The provision authorizing the court of appeals to certify questions to the Supreme Court is new legislation so far as this court is concerned.

As to the provision relating to certiorari, see notes to section 240, p. 122.

On certification to the Supreme Court, see notes to section 239, p. 121.

For a case in which certiorari was granted so that the principles of law governing conspiracy might be definitely settled by the Supreme Court, this being of "vital importance to the United States, as well as to its citizens," see Hyde *v.* U. S., 225 U. S., 347, 355.

SEC. 252. The Supreme Court of the United States is hereby invested with appellate jurisdiction of controversies arising in bankruptcy proceedings, from the courts of bankruptcy, from which it has appellate jurisdiction in other cases; and shall exercise a like jurisdiction from courts of bankruptcy not within any organized circuit of the United States and from the Supreme Court of the District of Columbia.

Appellate jurisdiction under the bankruptcy act.

1 July, 1898, 30 Stat. L., 553, c. 541, ss. 24, 25; 2 Supp., 853.

An appeal may be taken to the Supreme Court of the United States from any final decision of a court of appeals allowing or rejecting a claim under the laws relating to bankruptcy, under such rules and within such time as may be prescribed by said Supreme Court, in the following cases and no other:

First. Where the amount in controversy exceeds the sum of two thousand dollars, and the question involved is one which might have been taken on appeal or writ of error from the highest court of a State to the Supreme Court of the United States; or

Amount in controversy.

Second. Where some justice of the Supreme Court shall certify that in his opinion the determination of the question involved in the allowance or rejection of such claim is essential to a uniform construction of the laws relating to bankruptcy throughout the United States.

Certificate for uniform construction.

Controversies may be certified to the Supreme Court of the United States from other courts of the United States, and the former court may exercise jurisdiction thereof, and may issue writs of certiorari pursuant to the provisions of the United States laws now in force or such as may be hereafter enacted. (*36 Stat. L., 1159.*)

Cases certified from other courts.

This section states concisely the appellate jurisdiction of the Supreme Court conferred upon it by the bankruptcy act of July 1, 1898 (2 Supp., 853). The only changes in phraseology are those necessary to separate the provisions relating to the Supreme Court from those relating to other courts.

JURISDICTION GENERALLY.

This section "relates to controversies in bankruptcy proceedings in the exercise by the bankruptcy courts of the jurisdiction, vested in them at law and in equity by section 2, to settle the estates of bankrupts and to determine controversies in relation thereto." Hewit *v.* Berlin Machine works, 194 U. S., 300.

CONTROVERSIES APPEALABLE.

"Controversies in bankruptcy proceedings" as used in this section do not include mere steps in bankruptcy, but embrace controversies which are not of that inherent character, even although they may arise in the course of proceedings in bankruptcy. . . . "The mere allowing or disallowing of a claim in bankruptcy is a proceeding in bankruptcy and not a controversy arising in bankruptcy, within the intendment of the section." Tefft, Weller & Co. *v.* Munsuri, 222 U. S., 118; Matter of Loving, 224 U. S., 183. See also Thomas *v.* Woods, 173 Fed., 585, 589, 590.

APPEALS FROM CIRCUIT COURTS OF APPEALS.

That this section is to be strictly construed, see Holden *v.* Stratton, 191 U. S., 115. An order denying a petition for rehearing is not appealable under this section. Conboy *v.* First Nat. Bank of Jersey City, 203 U. S., 141. As to what is a "final decision allowing or rejecting a claim," see Calnan *v.* Doherty, 224 U. S., 145; National Bank of Commerce *v.* Downie, 218 U. S., 345; Hiscock *v.* Varick Bank, 206 U. S., 28.

"*First.*"—Cases appealable under this provision must involve a Federal question within the meaning of section 237 of this code. Coder *v.* Arts, 213 U. S., 223.

"*Second.*"—For cases brought under certification of a Justice of the Supreme Court, see National Bank of Commerce *v.* Downie, 218 U. S., 345; Jaquith *v.* Alden, 189 U. S., 78. The certificate of a Justice is essential where it is claimed a "uniform construction" is necessary, in the absence of Federal questions. Chapman *v.* Bowen, 207 U. S., 89.

CONTROVERSIES CERTIFIED.

That "other courts" applies only to the circuit courts of appeals, see Bardes *v.* Hawarden Bank, 175 U. S., 526. Illustrative cases certified under this provision are, Matter of Loving, 224 U. S., 183; Matter of Harris, 221 U. S., 274; in re Wood & Henderson, 210 U. S., 246. The Supreme Court will confine itself to the facts stated in the certificate, and will not consider other facts alleged in the briefs. Wall *v.* Cox, 181 U. S., 244.

In connection with this provision see section 239 of this code.

CERTIORARI.

For illustrative cases on this provision, see Duryea Power Co. *v.* Sternbergh, 218 U. S., 299; Richardson *v.* Shaw, 209 U. S., 365. That the issuance of this writ does not depend upon a jurisdictional amount, see Whitney *v.* Dick, 202 U. S., 132. As to the form of petition for writ, see First Natl. Bank *v.* Title & Trust Co., 198 U. S., 280.

Precedence of writs of error to State courts.

R. S., s. 710.

SEC. 253. Cases on writ of error to revise the judgment of a State court in any criminal case shall have precedence on the docket of the Supreme Court, of all cases to which the Government of the United States is not a party, excepting only such cases as the court, in its discretion, may decide to be of public importance. (*36 Stat. L., 1160.*)

This section made no change in the law.

Cost of printing records.

3 Mar., 1877, 19 Stat. L., 344, c. 105; 1 Supp., 136.

SEC. 254. There shall be taxed against the losing party in each and every cause pending in the Supreme Court the cost of printing the record in such case, except when the judgment is against the United States. (*36 Stat. L., 1160.*)

The act of March 3, 1877 (19 Stat., 344), required the clerk of the Supreme Court to collect from the losing party in any case the cost of printing the record, and to pay it into the Treasury; the cost of printing the records in the first instance being paid out of appropriations made by Congress. As Congress quite regularly failed to appropriate a sufficient sum to pay for such printing, thus stopping the work of the court, the court, about the year 1883, changed its rules and required the party filing a case in that court to deposit a sum sufficient to pay the cost of printing the record, this sum ultimately being paid by the losing party. This has been the practice of the court since that time; and the act of 1877 is modified accordingly.

In so far as the act revised in this section applies to the Court of Claims, it has been revised in section 176 of this code, p. 96.

Women may be admitted to practice.

15 Feb., 1879, 20 Stat. L., 292, c. 81; 1 Supp., 217.

SEC. 255. Any woman who shall have been a member of the bar of the highest court of any State or Territory, or of the Court of Appeals of the District of Columbia, for the space of three years, and shall have maintained a good standing before such court, and who shall be a person of good moral character, shall, on motion, and the production of such record, be admitted to practice before the Supreme Court of the United States. (*36 Stat. L., 1160.*)

This section made no change in the law.

CHAPTER ELEVEN.

PROVISIONS COMMON TO MORE THAN ONE COURT.

Cases in which jurisdiction of United States courts shall be exclusive of State courts.

R. S., s. 711.

SEC. 256. The jurisdiction vested in the courts of the United States in the cases and proceedings hereinafter mentioned, shall be exclusive of the courts of the several States:

First. Of all crimes and offenses cognizable under the authority of the United States.

Second. Of all suits for penalties and forfeitures incurred under the laws of the United States.

Third. Of all civil causes of admiralty and maritime jurisdiction; saving to suitors, in all cases, the right of a common-law remedy; where the common law is competent to give it.

Fourth. Of all seizures under the laws of the United States, on land or on waters not within admiralty and maritime jurisdiction; of all prizes brought into the United States; and of all proceedings for the condemnation of property taken as prize.

Fifth. Of all cases arising under the patent-right, or copyright laws of the United States.

Sixth. Of all matters and proceedings in bankruptcy.

Seventh. Of all controversies of a civil nature, where a State is a party, except between a State and its citizens, or between a State and citizens of other States, or aliens.

Eighth. Of all suits and proceedings against ambassadors, or other public ministers, or their domestics, or domestic servants, or against consuls or vice consults. (*36 Stat. L., 1160.*)

"First." This clause made no change in the law. See paragraph "second" of section 24 of this code, p. 14.

"Second." This paragraph is a reenactment of the same provision in the Revised Statutes. See paragraph "ninth" of section 24, p. 17.

"Third." This paragraph is a reenactment of the "third" paragraph of section 711, Revised Statutes. See paragraph "third" of section 24, p. 14.

"Fourth." This clause embraces the jurisdiction conferred by clause "fourth" of section 711, Revised Statutes, as well as that conferred upon the district courts by clause "eighth" of section 563, of prizes, and upon the circuit courts by clause "sixth" of section 629, which jurisdiction, under those clauses, was and is exclusive. See paragraph "third" of section 24 of this code, p. 14.

"Fifth." This clause is a reenactment of paragraph "fifth" of section 711, Revised Statutes. See paragraph "seventh" of section 24 of this code, p. 16.

"Sixth." This section made no change in the law. See in this connection paragraph "nineteenth" of section 24 of this code, p. 19.

"Seventh." This paragraph reenacts the same numbered clause of section 711, Revised Statutes. See section 233 of this code, p. 116.

"Eighth." This paragraph reenacted clause "eighth" of section 711, Revised Statutes, that clause having been repealed by the act of February 18, 1875 (18 Stat., 318), being "An act to correct errors and to supply omissions" in the Revised Statutes of the United States. Just why this clause was repealed the Committee on Revision of the Laws is unable to state. In re Iasigi (79 Fed., 751, 753) the court, discussing the repeal of this provision, says: "As respects any actual intention of Congress, the repeal of paragraph 8 of section 711, by the act of 1875, affords no light. The explanation of that repeal is difficult, if not impossible. The act is entitled 'An act to correct errors and supply omissions' in the Revised Statutes of the United States. It embraces over seventy different subjects, and the first section of the act declares that the amendments therein made are made for the purpose of correcting errors and supply omissions in the Revised Statutes 'so as to make the same truly express the laws in force on December 1, 1873' There is no doubt that on December 1, 1873, the jurisdiction of the Federal courts over consular offenses was exclusive. In both Houses of Congress, when the bill was presented, as appears from the Congressional Record, Members were induced to withdraw proposed amendments on the positive assurance that this act contained no new legislation, and was solely for the purposes above expressed."

Believing that the jurisdiction of the Federal courts of suits against ambassadors, public ministers, and consuls should be exclusive, the committee restored the clause and recommended its reenactment.

See paragraph "eighteenth" of section 24 of this code, p. 19.

In addition to the appropriate notes under section 24 of this code, see the following in reference to the respective clauses:

"First." As to a crime punishable by either the United States or a State, see Robb *v.* Connolly, 111 U. S., 624; Cross *v.* North Carolina, 132 U. S., 131; New York *v.* Eno, 155 U. S., 89.

"Third." Moran *v.* Sturges, 154 U. S., 254, as to the rule of comity applicable where one court has taken jurisdiction of the *res*, and its applicability to admiralty proceedings.

"Seventh." Plaquemines Fruit Co. *v.* Henderson (170 U. S., 511).

Oath of United States judges.

R. S., s. 712.

SEC. 257. The justices of the Supreme Court, the circuit judges, and the district judges, hereafter appointed, shall take the following oath before they proceed to perform the duties of their respective offices: "I, ——— ———, do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as ——— according to the best of my abilities and understanding, agreeably to the Constitution and laws of the United States: So help me God." (*36 Stat. L., 1161.*)

This section made no change in the law.

"No position can be more clear than that all the Federal judges are bound by the solemn obligation of religion to regulate their decisions agreeably to the Constitution of the United States, and that it is the standard of their determination in all cases that come before them." U. S. *v.* Callender, 25 Fed. Cas., No. 14709.

Judges prohibited from practicing law.

R. S., s. 713.

SEC. 258. It shall not be lawful for any judge appointed under the authority of the United States to exercise the profession or employment of counsel or attorney, or to be engaged in the practice of the law. Any person offending against the prohibition of this section shall be deemed guilty of a high misdemeanor. (*36 Stat. L., 1161.*)

This section was existing law.

That "no man can serve two masters," and that the prohibitions of this section are not restrictions of liberty or deprivations of property, but are the laws aids to public service, because they make the public servant have an eye single to the public duty, see U. S. *v.* Delaware, etc., Co., 164 Fed., 215, 258.

Traveling expenses, etc., of circuit justices and circuit and district judges.

3 Mar., 1891, 26 Stat. L., 828, c. 517, s. 8; 1 Supp., 904.
3 Mar., 1905, 33 Stat. L., 1208, c. 1483.

SEC. 259. The circuit justices, the circuit and district judges of the United States, and the judges of the district courts of the United States in Alaska, Hawaii, and Porto Rico, shall each be allowed and paid his necessary expenses of travel, and his reasonable expenses (not to exceed ten dollars per day) actually incurred for maintenance, consequent upon his attending court or transacting other official business in pursuance of law at any place other than his official place of residence, said expenses to be paid by the marshal of the district in which such court is held or official business transacted, upon the written certificate of the justice or judge. The official place of residence of each justice and of each circuit judge while assigned to the Commerce Court shall be at Washington; and the official place of residence of each circuit and district judge, and of each judge of the district courts of the United States in Alaska, Hawaii, and Porto Rico, shall be at that place nearest his actual residence at which either a circuit court of appeals or a district court is regularly held. Every such judge shall, upon his appointment, and from time to time thereafter whenever he may change his official residence, in writing notify the Department of Justice of his official place of residence. (*36 Stat. L., 1161.*)

Certificate.

Official residence.

In making appropriations during the past three or four years, as, for example the act of March 3, 1905, for the expenses of judges while holding court at a place other than their official residences, Congress has imposed the condition that the expenses must have been "actually incurred" for travel and attendance; and since these words appear in each recurring appropriation act it is fair to assume that this change expresses the will of Congress in that regard, and they have therefore been carried into the section.

Salary of judges after resignation.

R. S., s. 714.
15 Feb., 1909, 35 Stat. L., 619, c. 127.

SEC. 260. When any judge of any court of the United States appointed to hold his office during good behavior resigns his office, after having held a commission or commissions as judge of any such court or courts at least ten years continuously, and having attained the age of seventy years, he shall, during the residue of his natural life, receive the salary which is payable at the time of his retirement for the office that he held at the time of his resignation. (*36 Stat. L., 1161.*)

This section made no change in the law.

In holding that this section was applicable to the Supreme Court of the District of Columbia, the Supreme Court said: "The words of the statute, 'when any judge of any court of the United States resigns his office,' are broad enough to embrace all courts created by the United States, without taking into view the particular constitutional authority which was exercised in such creation. It is true that the statute excludes the conception that it was intended to apply to judges of courts created by Congress when the term of office was of a limited duration. Conversely, in our opinion, the text of the statute leaves no room for question that its provisions were intended to apply to a judge of any court of the United States holding his office by a life tenure, such as during good behavior." James *v.* U. S., 202 U. S., 408. As to the meaning of the word "salary" as used in this section, see Benedict *v.* U. S., 176 U. S., 360.

Writs of ne exeat.

R. S., s. 717.

SEC. 261. Writs of ne exeat may be granted by any justice of the Supreme Court, in cases where they might be granted by the Supreme Court; and by any district judge, in cases where they might be granted by the district court of which he is a judge. But no writ of ne exeat shall be granted unless a suit in equity is commenced, and satisfactory proof is made to the court or judge granting the same that the defendant designs quickly to depart from the United States. (*36 Stat. L., 1162.*)

Restriction.

Since circuit courts are abolished by section 289 of this code, the words "circuit justice or circuit judge" are omitted and the words "district judge" substituted, so that the jurisdiction formerly exercised by these officers will, by the change, be exercised by the district court and the district judge. The writ being ancillary to the exercise of original jurisdiction only, the power to issue it should be, and here is, confined to the Supreme Court and the district courts and their justices and judges. No other change was made in the law.

A form of the writ of *ne exeat* will be found in Griswold *v.* Hazard, 141 U. S., 263.

Purpose of and allegations for the writ, see Mackenzie *v.* Barrett, 141 Fed., 965.

Nature of remedy, re Cohen, 136 Fed., 999; Gooding *v.* Reid, M. & Co., 177 Fed., 684.

How long writ remains in force, Shainwald *v.* Lewis, 48 Fed., 500.

When writ discharged, see Griswold *v.* Hazard, supra.

Power to issue writs.

R. S., s. 716.

SEC. 262. The Supreme Court and the district courts shall have power to issue writs of scire facias. The Supreme Court, the circuit courts of appeals, and the district courts shall have power to issue all writs not specifically provided for by statute, which may be necessary for the exercise of their respective jurisdictions, and agreeable to the usages and principles of law. (*36 Stat. L., 1162.*)

What is said respecting the change made in section 261 also applies to the writ of *scire facias;* hence a reference to the circuit courts is omitted. That omission makes necessary the mention of the courts in the second sentence in order to preserve in those courts the power to issue other writs necessary for the exercise of their respective jurisdictions.

JURISDICTION GENERALLY.

Where a case is properly before the Supreme Court it has a right to issue any writ which may be necessary to render its appellate jurisdiction effectual. Ex parte Milwaukee R. Co., 5 Wall., 190. But in cases over which that court possesses neither original nor appellate jurisdiction it will not grant prohibition, mandamus or certiorari as ancillary thereto. In re Massachusetts, 197 U. S., 482.

The circuit court of appeals has power to issue *scire facias* under this section. McClellan *v.* Carland, 217 U. S., 268. But cannot issue a writ of *habeas corpus* as an original and independent proceeding. Whitney *v.* Dick, 202 U. S., 132.

CERTIORARI.

In United States *v.* Dickinson, 213 U. S., 100, the Supreme Court said that this section "was not a grant to this court of jurisdiction to this court of appellate jurisdiction to review by certiorari for the mere correction of error any or all decisions of the lower Federal courts not otherwise reviewable."

SCIRE FACIAS.

As to the issue of this writ by the District Courts, see Kirk *v.* U. S., 131 Fed., 331, 137 Fed., 753; Collin County Bank *v.* Hughes, 152 Fed., 414, 155 Fed., 389.

MANDAMUS.

United States court can only issue mandamus in aid of an existing jurisdiction. In re Coleman, 131 Fed., 151; McClung *v.* Silliman, 6 Wheat., 601; Covington Bridge Co. *v.* Hager, 203 U. S., 109. The issue of the writ is subject to the legal and equitable discretion of the court. Insurance Co. *v.* Wilson, 8 Pet., 291. And not where there is another adequate remedy. Kendall *v.* Stokes, 3 How., 87. It will not perform the office of an appeal or writ of error. Re Newman, 14 Wall., 152; In re Blake, 175 U. S., 114. Neither a court nor an executive officer can be compelled by the writ to decide a matter within its discretion. Interstate Commerce Com. *v.* Humboldt Steamship Co., 224 U. S., 484; Ness *v.* Fisher, 223 U. S., 683. But see McClellan *v.* Carland, 217 U. S., 280. As to the power of the Circuit Courts of Appeals to issue this writ, see U. S. *v.* Severens, 71 Fed., 768. That mandamus is not a writ of right, and will not be granted in aid of those who do not come into court with clean hands, see Turner *v.* Fisher, 222 U. S., 204.

SUPERSEDEAS.

This section authorizes the Federal court to issue a writ of supersedeas. In re McKenzie, 180 U. S., 536. See also Goddard *v.* Ordway, 94 U. S., 672.

OTHER WRITS.

In Hills & Co. *v.* Hoover, 220 U. S., 336, the Supreme Court held that this section "confers broad powers upon the courts of the United States," and said that "where the state statute, or practice, is not adequate to afford relief which Congress has provided in a given statute, resort must be had to the power of the Federal court to adapt its practice and issue its writs and administer its

remedies so as to enforce the Federal law." . . . "There is no difficulty in issuing a writ in the nature of a writ of replevin." Subpœna *duces tecum* may be issued under this section. Am. Lithographic Co. *v.* Werckmeister, 221 U. S., 603.

Temporary restraining orders.

R. S., s. 718.

SEC. 263. Whenever notice is given of a motion for an injunction out of a district court, the court or judge thereof may, if there appears to be danger of irreparable injury from delay, grant an order restraining the act sought to be enjoined until the decision upon the motion; and such order may be granted with or without security, in the discretion of the court or judge. (*36 Stat. L., 1162.*)

Aside from the omission of reference to the circuit court, this section states what was existing law.

PURPOSE OF SECTION.

Considering this section the Supreme Court has said: "By force of section 718 a judge may grant a restraining order in case it appears to him there is danger of irreparable injury, to be in force 'until the decision upon the motion' for temporary injunction. Thus by its very terms the section does not deal with temporary injunctions, concerning which power is given in other sections of the statutes, but is intended to give power to preserve the *status quo* when there is danger of irreparable injury from delay in giving the notice required by equity rule 55, governing the issue of injunctions. While the statutory restraining order is a species of temporary injunction, it is only authorized, as section 718 imports by its terms, until the pending motion for a temporary injunction can be heard and decided." Houghton *v.* Meyer, 208 U. S., 156; Hutchins *v.* Munn, 209 U. S., 249.

See Equity Rule No. 73, November 4, 1912 (226 U. S., 670; 198 Fed. XXIX).

Injunctions.

R. S., s. 719.

By justice of Supreme Court or district judge.

Restrictions.

By circuit judge.

SEC. 264. Writs of injunction may be granted by any justice of the Supreme Court in cases where they might be granted by the Supreme Court; and by any judge of a district court in cases where they might be granted by such court. But no justice of the Supreme Court shall hear or allow any application for an injunction or restraining order in any cause pending in the circuit to which he is allotted, elsewhere than within such circuit, or at such place outside of the same as the parties may stipulate in writing, except when it can not be heard by the district judge of the district. In case of the absence from the district of the district judge, or of his disability, any circuit judge of the circuit in which the district is situated may grant an injunction or restraining order in any case pending in the district court, where the same might be granted by the district judge. (*36 Stat. L., 1162.*)

In view of the fact that the circuit courts are abolished by section 289 of this code, the authority formerly conferred upon a circuit judge to grant injunctions in cases where they might be granted by such court is omitted and a similar provision vesting in district judges a similar power has been inserted. For the same reason the last paragraph of section 719, Revised Statutes, is also omitted.

To meet a condition that might arise in a district, a provision has been added to the effect that in case of the absence of the district judge, or of his disability, any circuit judge of the circuit may issue an injunction or restraining order in cases where it might be issued by the district judge. This is but an extension of the power conferred upon the circuit judges by section 18 of this code.

As to the power of a justice of the Supreme Court, see Searles *v.* Jacksonville, etc., R. Co., 2 Woods, 621, 21 Fed. Cas., No. 12586. As to the purpose of this statute, see U. S. *v.* Weber, 114 Fed., 950. As to the power of a district judge, see Goodyear Dental Vulcanite Co. *v.* Folsom, 3 Fed., 509; Parker *v.* Judges, 12 Wheat., 561. See also In re Lennon, 166 U. S., 548.

Injunctions to stay proceedings in State courts.

R. S., s. 720.

SEC. 265. The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a State, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy. (*36 Stat. L., 1162.*)

This section made no change in the law.

This section was held to apply to the Supreme Court in the Slaughter House Cases, 10 Wall., 273. That it is to be construed in connection with section

262 of this code, see Sharon *v.* Terry, 36 Feb., 337; Gay *v.* Hudson River Elec. Pow. Co., 182 Fed., 279. As to the extent of the protection of the section, see Sargent *v.* Helton, 115 U. S., 348; Security Trust Co. *v.* Union Trust Co., 134 Fed., 301. Where the jurisdiction of the State and Federal courts is concurrent, see Harkrader *v.* Wadley, 172 U. S., 148.

"PROCEEDINGS."

That this includes "all steps taken in a suit from its inception to and including final process," see Am. Shipbuilding Co. *v.* Whitney, 190 Fed., 109.

STATE COURTS.

A State railroad commission is not a court within the meaning of this section. Mississippi R. R. Com. *v.* Illinois Cent. R. R. Co., 203 U. S., 335. Even though some of its functions are judicial in character. Prentis *v.* Atlantic Coast Line, 211 U. S., 226. On the question of criminal proceedings, see Philadelphia Co. *v.* Stimson, 223 U. S., 620. On the rule of comity between State and Federal courts, see Hall *v.* Ames, 190 Fed., 138; Aultman & Taylor Co. *v.* Brumfield, 102 Feb., 7.

SUSTAINING FEDERAL JURISDICTION.

"Where a Federal court acts in aid of its own jurisdiction, and to render its decree effectual, it may, notwithstanding section 720, Rev. Stat., restrain all proceedings in a State court which would have the effect of defeating or impairing its jurisdiction." Julian *v.* Central Trust Co., 193 U. S., 112. And where the jurisdiction of the Federal court had attached by a voluntary submission of a State and its officers, it was said: "The proposition that the eleventh amendment, or section 720, Revised Statutes, control a court of the United States in administering relief, although the court was acting in a matter ancillary to a decree rendered in a cause over which it had jurisdiction, is not open for discussion." Gunter *v.* Atlantic Coast Line, 200 U. S., 292. And in Ex parte Simon, 208 U. S., 148, the Supreme Court said: "It would be going far to say, that, although the circuit court had power to grant relief by final decree, it had not power to preserve the rights of the parties until the final decree should be reached."

BANKRUPTCY.

A district court has no power to issue an *ex parte* injunction "without notice or service of process, attempting to restrain a creditor from suing in a State outside the jurisdiction of the district court." Acme Harvester Co. *v.* Beekman Lumber Co., 222 U. S., 300.

Constitutionality of State statutes, see section 266 of this code.

Injunctions based upon alleged unconstitutionality of State statutes; when and by whom may be granted.

18 June, 1910, 36 Stat. L., 557, c. 309, s. 17.
3 Mar., 1913, 37 Stat. L., — c.

SEC. 266. No interlocutory injunction suspending or restraining the enforcement, operation, or execution of any statute of a State by restraining the action of any officer of such State in the enforcement or execution of such statute, [or in the enforcement or execution of an order made by an administrative board or commission acting under and pursuant to the statutes of such State] shall be issued or granted by any justice of the Supreme Court, or by any district court of the United States, or by any judge thereof, or by any circuit judge acting as district judge, upon the ground of the unconstitutionality of such statute, unless the application for the same shall be presented to a justice of the Supreme Court of the United States, or to a circuit or district judge, and shall be heard and determined by three judges, of whom at least one shall be a justice of the Supreme Court or a circuit judge, and the other two may be either circuit or district judges, and unless a majority of said three judges shall concur in granting such application. Whenever such application as aforesaid is presented to a justice of the Supreme Court, or to a judge, he shall immediately call to his assistance to hear and determine the application two other judges: *Provided, however*, That one of such three judges shall be a justice of the Supreme Court, or a circuit judge. Said application shall not be heard or determined before at least five days' notice of the hearing has been given to the governor and to the attorney general of the State, and to such other persons

Hearing by three judges.

Application; procedure.

Notice.

as may be defendants in the suit: *Provided*, That if of opinion that irreparable loss or damage would result to the complainant unless a temporary restraining order is granted, any justice of the Supreme Court, or any circuit or district judge, may grant such temporary restraining order at any time before such hearing and determination of the application for an interlocutory injunction, but such temporary restraining order shall remain in force only until the hearing and determination of the application for an interlocutory injunction upon notice as aforesaid. The hearing upon such application for an interlocutory injunction shall be given precedence and shall be in every way expedited and be assigned for a hearing at the earliest practicable day after the expiration of the notice hereinbefore provided for. An appeal may be taken direct to the Supreme Court of the United States from the order granting or denying, after notice and hearing, an interlocutory injunction in such case. [It is further provided that if before the final hearing of such application a suit shall have been brought in a court of the State having jurisdiction thereof under the laws of such State, to enforce such statute or order, accompanied by a stay in such State court of proceedings under such statute or order pending the determination of such suit by such State court, all proceedings in any court of the United States to restrain the execution of such statute or order shall be stayed pending the final determination of such suit in the courts of the State. Such stay may be vacated upon proof made after hearing, and notice of ten days served upon the attorney general of the State, that the suit in the State courts is not being prosecuted with diligence and good faith.] (*36 Stat. L., 1162.*)

Irreparable damage; temporary restraining order.

Hearing given precedence.

Appeals.

Stay of proceedings in Federal court.

Aside from changes in language required on account of the abolition of the circuit courts by section 289 of this code, this section states what was existing law. The section was amended as here given by the act of March 4, 1913, which added the words in brackets at the beginning of the section and the provisions in brackets at the end of the section.

In connection with this section, see section 129 of this code, p. 81.

LIMITATIONS ON POWER OF SINGLE JUDGE.

In the case of Ex parte Metropolitan Water Co., 220 U. S., 539, 544, this section was construed by the Supreme Court and Mr. Chief Justice White said: It results from the text of this section "that limitations are unequivocally imposed upon the power of the single justice or judge to act in the character of case to which the provision refers. They are, *a*, to receive an application for an interlocutory injunction in the character of case stated in the section; *b*, within the period specified in the section to grant a temporary restraining order "if of opinion that irreparable loss or damage would result to the complainant unless a temporary restraining order is granted;" and, *c*, to immediately call to his assistance to hear and determine the application (for an interlocutory injunction) two other judges. It is to the hearing thus provided for that the notice must relate which is to be given to the Governor and the Attorney General of the State and "such other persons as may be defendants in the suit." It is the hearing before the court thus constituted, also that is required to be expedited; and the appeal authorized by the section to be taken directly to this court "from the order granting or denying, after notice and hearing, an interlocutory injunction" is manifestly an appeal from the expedited hearing had before the court consisting of three judges. We find no expression of or implication anywhere in the section justifying the assumption that there was an intention on the part of Congress that the single justice or judge to whom the application for interlocutory injunction should be presented need not call to his assistance two other judges to pass upon the application, in the event that he was of opinion that the claim of the unconstitutionality of the statute was untenable. On the contrary, the statute evidences the purpose of Congress that the application for the interlocutory injunction should be heard before the enlarged court, whether the claim of unconstitutionality be or be not meritorious, as the appeal allowed to this court is from an order denying as well as from an order granting an injunction."

As to State statutes alleged to be confiscatory, see Willcox *v.* Consolidated Gas Co., 212 U. S., 19, 40; Ex parte Young, 209 U. S., 123, holding that a Federal court may enjoin an individual or state officer from enforcing a State statute on account of its unconstitutionality.

See also Sperry & Huchinson Co. *v.* Tacoma, 190 Fed., 682, holding that a city ordinance is not a statute of a State within the meaning of this section. To the same point see Cumberland Tel. & Teleg. Co. *v.* City of Memphis, 198 Fed., 955.

When suits in equity may be maintained.

R. S., s. 723.

SEC. 267. Suits in equity shall not be sustained in any court of the United States in any case where a plain, adequate, and complete remedy may be had at law. (*36 Stat. L., 1163.*)

In view of the fact that the circuit courts are abolished by section 289 of this code, the words "in any court" have been substituted for the words "in either of the courts." Otherwise the section states what was existing law.

SECTION MERELY DECLARATORY.

That this section is merely declaratory of the equitable rule, and neither enlarges nor contracts the equitable jurisdiction of the Federal courts, nor excludes them from any recognized field of equitable jurisdiction, see Brissell *v.* Knapp, 155 Fed., 815; Boyce *v.* Grundy, 3 Pet., 215.

REMEDY AT LAW.

Under this section "the remedy at law, in order to exclude equity, must be as practical and efficient to the ends of justice and its prompt administration, as the remedy in equity." Tyler *v.* Savage, 143 U. S., 95; Preston *v.* Sturgis Milling Co., 183 Fed., 1.

DISTINCTIONS BETWEEN REMEDIES.

On this subject the Supreme Court has said: "It would be difficult, and perhaps impossible, to state any general rule which would determine, in all cases, what should be deemed a suit in equity as distinguished from an action at law, for particular elements may enter into consideration which would take the matter from one court to the other; but this may be said, that, where an action is simply for the recovery and possession of specific real or personal property, or for the recovery of a money judgment, the action is one at law." Whitehead *v.* Shattuck, 138 U. S., 151. See also Jones *v.* Mutual Fidelity Co., 123 Fed., 507.

As to the effect of State statutes, see Lawson *v.* U. S. Mining Co., 207 U. S., 1.

Power to administer oaths and punish contempts.

R. S., s. 725.

Limitation.

SEC. 268. The said courts shall have power to impose and administer all necessary oaths, and to punish, by fine or imprisonment, at the discretion of the court, contempts of their authority: *Provided*, That such power to punish contempts shall not be construed to extend to any cases except the misbehavior of any person in their presence, or so near thereto as to obstruct the administration of justice, the misbehavior of any of the officers of said courts in their official transactions, and the disobedience or resistance by any such officer, or by any party, juror, witness, or other person to any lawful writ, process, order, rule, decree, or command of the said courts. (*36 Stat. L., 1163.*)

This section states what was existing law.

INHERENT POWER OF COURTS.

"From the very nature of their institution, and that their lawful judgments may be respected and enforced, the courts of the United States possess the power to punish for contempts." Interstate Commerce Com. *v.* Brimson, 154 U. S., 489; In re Debs, 158 U. S., 595. See also In re Nevitt, 117 Fed., 448. In this connection see Cuyler *v.* Atlantic, etc., R. Co. 131 Fed., 95, in which case the words "so near thereto" are construed. That this provision is "intended to limit the power of the courts to punish for contempts," see Eilenbecker *v.* Plymouth Co. 134 U. S., 37–8.

Where the order committing for contempt is void, see Ex parte Terry, 128 U. S., 289. As to the distinction between civil and criminal contempts, see Gompers *v.* Bucks Stove & Range Co., 221 U. S., 441. Considering a contempt which was not "in the face of the court, or constructively in its presence," the Supreme Court said: "The vital matter of refusing to obey the court's command is as serious in the remotest corners of the country as in the courtroom." U. *v.* Shipp, 203 U. S., 566, 214 U. S., 386.

Preparing, verifying and securing the presentation of false affidavits, intended to influence the action of the court, is an "obstruction to the administration of justice" and punishable as a contempt under this section. In re Steiner, 195 Fed., 299.

SEC. 269. All of the said courts shall have power to grant new trials, in cases where there has been a trial by jury, for reasons for which new trials have usually been granted in the courts of law. (*36 Stat. L., 1163.*)

New trials.
R. S., s. 726.

This section made no change in the law.

REASONS FOR GRANTING NEW TRIALS.

In the case of Pringle *v.* Guild, 119 Fed., 964, the reasons are thus stated: "New trials are granted at law when the trial court erred in stating the law, or when the verdict of the jury has no evidence to sustain it, or when the great preponderance of the evidence is against the verdict, or when the verdict is due to passion, prejudice, or partisan feeling."

DISCRETION OF COURT.

"The allowance or refusal of a new trial rests in the sound discretion of the court to which the application is addressed, and the result cannot be made the subject of review by writ of error." Mattox *v.* U. S., 147. A new trial cannot be brought about by the writ of *habeas corpus.* Williams *v.* Walsh, 222 U. S., 422.

As to the constitutional provision "that no fact tried by a jury shall be otherwise reexamined in any court of the United States, than according to the rules of the common law," see Capital Traction Co. *v.* Hof, 174 U. S., 1, 10, 13.

SEC. 270. The judges of the Supreme Court and of the circuit courts of appeals and district courts, United States commissioners, and the judges and other magistrates of the several States, who are or may be authorized by law to make arrests for offenses against the United States, shall have the like authority to hold to security of the peace and for good behavior, in cases arising under the Constitution and laws of the United States, as may be lawfully exercised by any judge or justice of the peace of the respective States, in cases cognizable before them. (*36 Stat. L., 1163.*)

Power to hold to security for the peace and good behavior.
R. S., s. 727.
22 June, 1874, 18 Stat. L., 193, c. 396; 1 Supp., 38.

The circuit courts being abolished by section 289 of this code, the words "circuit courts of appeals" have been inserted for "circuit courts," although the same judges are authorized to hold persons to security of the peace, etc. Commissioners of circuit courts, by the act of May 28, 1896 (2 Supp., 485), section 19, were abolished, and in lieu thereof United States commissioners were provided for, and the latter term has been substituted for the former in the section. These changes make no change in the law.

In Rice *v.* Ames, 180 U. S., 371, it was held that a United States Commissioner, in granting continuances in extradition proceedings, is not bound by the methods prescribed for justices of the peace by the statutes of the State. That the right to arrest covers the right to issue a warrant, see In re Mineau, 45 Fed., 188.

The United States Commissioner is a *quasi* judicial officer. Chin Bak Kan *v.* U. S., 186 U. S., 200. But does not exercise any part of the judicial power of the United States. In re Kaine, 14 How., 119. Though not strictly officers of the court, they are subject to its supervision and control. U. S. *v.* Allred, 155 U. S., 595. And removable by the court. Todd *v.* U. S., 158 U. S., 278. As to the authority of a United States Commissioner to administer oaths, see U. S. *v.* Reilly, 131 U. S., 58.

SEC. 271. The district courts and the United States commissioners shall have power to carry into effect, according to the true intent and meaning thereof, the award or arbitration or decree of any consul, vice-consul, or commercial agent of any foreign nation, made or rendered by virtue of authority conferred on him as such consul, vice-consul, or commercial agent, to sit as judge or arbitrator in such differences as may arise between the captains and crews of the vessels belonging to the nation whose interests are committed to his charge, application for the exercise of such power being first made to such court or commissioner, by petition of such consul, vice-consul, or commercial agent. And said courts and commissioners may issue all proper remedial process, mesne and final, to carry into full effect such award, arbitration, or decree, and to enforce obedience thereto by imprisonment in the jail or other place of confinement in the dis-

Power to enforce awards of foreign consuls, etc., in certain cases.
R. S., s. 728.
28 May, 1896, 29 Stat. L., 184, c. 252, s. 19; 2 Supp., 485.

Issue of process.

trict in which the United States may lawfully imprison any person arrested under the authority of the United States, until such award, arbitration, or decree is complied with, or the parties are otherwise discharged therefrom, by the consent in writing of such consul, vice-consul, or commercial agent, or his successor in office, or by the authority of the foreign government appointing such consul, vice-consul, or commercial agent: *Provided, however*, That the expenses of the said imprisonment and maintenance of the prisoners, and the cost of the proceedings, shall be borne by such foreign government, or by its consul, vice-consul, or commercial agent requiring such imprisonment. The marshals of the United States shall serve all such process, and do all other acts necessary and proper to carry into effect the premises, under the authority of the said courts and commissioners. (*36 Stat. L., 1163.*)

Expenses.

Service of process.

Aside from the omission of reference to the circuit courts, and the substitution of the words "United States commissioners" for the words "commissioners of circuit courts," for the reasons given in the note to section 270, this section states what was existing law.

The jurisdiction of consuls to exercise judicial functions depends upon treaties and laws regulating such jurisdiction. Dainese *v.* Hale, 91 U. S., 13. Reciprocating to the subjects of a nation is for the consideration of Congress, and is not a judicial function. The Nereide, 9 Cranch, 421. The jurisdiction of foreign consuls depends upon statutory authority or treaty stipulation. In re Aubrey, 26 Fed., 851.

Parties may manage their causes personally or by counsel.

R. S., s. 747.

SEC. 272. In all the courts of the United States the parties may plead and manage their own causes personally, or by the assistance of such counsel or attorneys at law as, by the rules of the said courts, respectively, are permitted to manage and conduct causes therein. (*36 Stat. L., 1164.*)

This section made no change in the law.

That this section recognizes the right of exclusive jurisdiction of the courts over the subject of admission of attorneys to practice, see In re Shorter, 22 Fed. Cas., No. 12811. That this section does not apply to criminal cases, see U. S. *v.* Stone, 8 Fed., 261.

Certain officers forbidden to act as attorneys.

R. S., s. 748.

SEC. 273. No clerk, or assistant or deputy clerk, of any Territorial, district, or circuit court of appeals, or of the Court of Claims, or of the Supreme Court of the United States, or marshal or deputy marshal of the United States within the district for which he is appointed, shall act as a solicitor, proctor, attorney, or counsel in any cause depending in any of said courts, or in any district for which he is acting as such officer. (*36 Stat. L., 1164.*)

The only changes in this section are made by adding the words "of appeals" after the words "circuit court," thus making the clerks and deputies of those courts subject to its provisions, and dropping clerks of circuit courts, since those courts and their clerks are abolished by section 289 of this code; and by substituting the word "any" for "either," near the end of the section, as more than two courts are referred to.

Penalty for violating preceding section.

R. S., s. 749.

SEC. 274. Whoever shall violate the provisions of the preceding section shall be stricken from the roll of attorneys by the court upon complaint, upon which the respondent shall have due notice and be heard in his defense; and in the case of a marshal or deputy marshal so acting, he shall be recommended by the court for dismissal from office. (*36 Stat. L., 1164.*)

In the first clause of this section the words "shall" and "provisions of the" have been inserted for the purpose of correcting the text, and make no change in the law.

CHAPTER TWELVE.

JURIES.

Qualifications and exemptions of jurors.

R. S., s. 800. 30 June, 1879, 21 Stat. L., 43, c. 52, s. 2; 1 Supp., 270.

SEC. 275. Jurors to serve in the courts of the United States, in each State respectively, shall have the same qualifications, subject to the provisions hereinafter contained, and be entitled to the same exemptions, as jurors of the highest court of law in such State may have and be entitled to at the time when such jurors for service in the courts of the United States are summoned. (*36 Stat. L., 1164.*)

This section states what was existing law, and is drawn from that portion of section 800, Revised Statutes, which was not superseded or repealed by the jury law of June 30, 1879 (1 Supp., 270), revised in section 276 of this code.

STATE LAWS.

Construing this section the Supreme Court has said: "In respect to the qualifications and exemptions of jurors to serve in the courts of the United States, the State laws are controlling. But Congress has not made the laws and usages relating to the designation and empaneling of jurors in the respective State courts applicable to the courts of the United States, except as the latter shall by general standing rule or by special order in a particular case adopt the State practice in that regard. . . . In the absence of such rule or order, the mode of designating and empaneling jurors for the trial of cases in the courts of the United States is within the control of those courts, subject only to the restrictions Congress has prescribed, and also to such limitations as are recognized by the settled principles of criminal law to be essential in securing impartial juries for the trial of offenses." St. Clair *v.* U. S., 154 U. S., 147. The number of jurors is determined by the Federal court, and not by State practice. U. S. *v.* Richardson, 28 Fed., 61.

Jurors, how drawn.

30 June, 1879, 21 Stat. L., 43, c. 52, s. 2; 1 Supp., 270.

SEC. 276. All such jurors, grand and petit, including those summoned during the session of the court, shall be publicly drawn from a box containing, at the time of each drawing, the names of not less than three hundred persons, possessing the qualifications prescribed in the section last preceding, which names shall have been placed therein by the clerk of such court and a commissioner, to be appointed by the judge thereof, or by the judge senior in commission in districts having more than one judge, which commissioner shall be a citizen of good standing, residing in the district in which such court is held, and a well-known member of the principal political party in the district in which the court is held opposing that to which the clerk may belong, the clerk and said commissioner each to place one name in said box alternately, without reference to party affiliations until the whole number required shall be placed therein. (*36 Stat. L., 1164.*)

This section reenacts part of section 2 of the act of June 30, 1879 (1 Supp., 270), the changes consisting of the omission of the words "and that" at the beginning of the section; the substitution of the words "the section last preceding" for the words "in section eight hundred of the Revised Statutes," that being the correct reference of this code; and the added provision vesting in the judge senior in commission in districts having more than one judge the power to appoint the court commissioner.

That the provision respecting the appointment of the commissioner is directory and not mandatory, see U. S. *v.* Chaires, 40 Fed., 820. The provision that the jurors shall be publicly drawn from a box containing not less than three hundred names is mandatory. U. S. *v.* Greene, 108 Fed., 816. This section is to be construed in connection with section 804, Revised Statutes (now section 280 of this code). St. Clair *v.* U. S., 154 U. S., 146.

Jurors, how to be apportioned in the district.

R. S., s. 802.

SEC. 277. Jurors shall be returned from such parts of the district, from time to time, as the court shall direct, so as to be most favorable to an impartial trial, and so as not to incur an unnecessary expense, or unduly burden the citizens of any part of the district with such service. (*36 Stat. L., 1164.*)

This section is a reenactment of existing law.

This section is applicable to grand as well as petit jurors. Agnew *v.* U. S., 165 U. S., 44; Spencer *v.* U. S., 169 Fed., 562. This section is not in conflict with the sixth amendment to the Constitution of the United States. U. S. *v.* Ayres, 46 Fed., 651. As to the guarantees of this amendment, see U. S. *v.* Peuschel, 116 Fed., 642.

Race or color not to exclude.

1 Mar., 1875, 18 Stat. L., 336, c. 114, s. 4; 1 Supp., 68.

30 June, 1879, 21 Stat. L., 44, c. 52, s. 2; 1 Supp., 270.

SEC. 278. No citizen possessing all other qualifications which are or may be prescribed by law shall be disqualified for service as grand or petit juror in any court of the United States on account of race, color, or previous condition of servitude. (*36 Stat. L., 1165.*)

This section made no material change in the law.

In the case of In re Wood, 140 U. S., 285, the Supreme Court said: "While a colored citizen, party to a trial involving his life, liberty, or property, can not claim, as a matter of right, that his race shall have a representation on the jury, and while a mixed jury, in a particular case, is not, within the meaning of the Constitution, always or absolutely necessary to the equal protection of the laws, it *is* a right to which he is entitled, "that in the selection of jurors to pass upon life, liberty, or property there shall be no exclusion of his race, and no discrimination against them because of their color." See also Bush *v.* Kentucky, 107 U. S., 117. That Congress is constitutionally authorized to enact legislation of this character, see Ex parte Virginia, 100 U. S., 344.

Venire, how issued and served.

R. S., s. 803.

SEC. 279. Writs of venire facias, when directed by the court, shall issue from the clerk's office, and shall be served and returned by the marshal in person, or by his deputy; or, in case the marshal or his deputy is not an indifferent person, or is interested in the event of the cause, by such fit person as may be specially appointed for that purpose by the court, who shall administer to him an oath that he will truly and impartially serve and return the writ. Any person named in such writ who resides elsewhere than at the place at which the court is held, shall be served by the marshal mailing a copy thereof to such person commanding him to attend as a juror at a time and place designated therein, which copy shall be registered and deposited in the post-office addressed to such person at his usual post-office address. And the receipt of the person so addressed for such registered copy shall be regarded as personal service of such writ upon such person, and no mileage shall be allowed for the service of such person. The postage and registry fee shall be paid by the marshal and allowed him in the settlement of his accounts. (*36 Stat. L., 1165.*)

The first part of this section, down to the first period, was existing law. The latter portion is new. The present system of what is known as personal service was established at a time when the postal facilities were inadequate and precarious. This is no longer the case. There is now no more efficient or reliable agency in the service of the Government than its post-office establishment. Upon application to the department we were supplied with statistical information which shows that only one registered letter in one thousand fails to reach the person addressed. This proportion is considerably reduced when account is taken of errors in the addresses and removals and deaths of addressees. The Government intrusts matters of the highest importance to its mail, and makes it compulsory upon private citizens to act in the same confidence. There seems to be no reason why the service of venires, which requires only that the persons named shall be notified that their attendance is required at the time and place designated, should be an exception. The receipt of the person to whom the summons is addressed is made evidence of personal service. If it should occur that the summons did not reach such person, and the receipt was signed by another, upon the representation of those facts to the court they would unquestionably be accepted as an excuse for nonattendance. The saving of expense is the main consideration in support of this change. In districts of large area the mileage of field deputies when serving jurors amounts to a very considerable sum, and it would appear that this expense may wisely be saved.

Where a venire facias was held void for improper address, see U. S. *v.* Antz, 16 Fed., 119. That the writ need not show the name of the person to be tried, see Andersen *v.* U. S., 170 U. S., 501. As to the extent Federal courts will conform to State statutes and practice, see U. S. *v.* Richardson, 28 Fed., 61.

Talesmen for petit juries.
R. S., s. 804.

SEC. 280. When, from challenges or otherwise, there is not a petit jury to determine any civil or criminal cause, the marshal or his deputy shall, by order of the court in which such defect of jurors happens, return jurymen from the bystanders sufficient to complete the panel; and when the marshal or his deputy is disqualified as aforesaid, jurors may be so returned by such disinterested person as the court may appoint, and such person shall be sworn, as provided in the preceding section. (*36 Stat. L., 1165.*)

This section made no change in the law.

The Supreme Court has held that this section was neither expressly nor impliedly repealed by the act of June 30, 1879 (now embodied in section 276 of this code), and that act did not "touch the power of the court, whenever, at the time of forming a jury to try a particular case, the panel of jurors previously summoned according to law is found for any reason to have been exhausted, (to) call in talesmen from the bystanders to supply the deficiency." Lovejoy *v.* U. S., 128 U. S., 173; St. Clair *v.* U. S., 154 U. S., 147. See also U. S. *v.* Munford, 16 Fed., 164; U. S. *v.* Rose, 6 Fed., 136; U. S. *v.* Laughery, 13 Blatchf., 267.

Special juries.
R. S., s. 805.

SEC. 281. When special juries are ordered in any district court, they shall be returned by the marshal in the same manner and form as is required in such cases by the laws of the several States. (*36 Stat. L., 1165.*)

Except for the substitution of the word "district" for the word "circuit," this section reenacts existing law.

Number of grand jurors.
R. S., s. 808.

SEC. 282. Every grand jury impaneled before any district court shall consist of not less than sixteen nor more than twenty-three persons. If of the persons summoned less than sixteen attend, they shall be placed on the grand jury, and the court shall order the marshal to summon, either immediately or for a day fixed, from the body of the district, and not from the bystanders, a sufficient number of persons to complete the grand jury. And whenever a challenge to a grand juror is allowed, and there are not in attendance other jurors sufficient to complete the grand jury, the court shall make a like order to the marshal to summon a sufficient number of persons for that purpose. (*36 Stat. L., 1165.*)

Reference to circuit courts is omitted, as those courts are abolished by section 289 of this code. Otherwise the section states what was existing law.

This section "was not designed to regulate the impanelling of grand jurors in all courts where offenders against the laws of the United States could be tried, but only in the circuit and district courts," the Territorial courts being left free to act in obedience to their own laws. Reynolds *v.* U. S., 98 U. S., 154; Downes *v.* Bidwell, 182 U. S., 269; U. S. *v.* Haskell, 169 Fed., 449. When objections to competency of grand jury are deemed to be waived, see U. S. *v.* Louisville, etc., R. Co., 177 Fed., 780. As to the procedure where additional jurors are required to complete the panel, U. S. *v.* Eagan, 30 Fed., 608.

Foreman of grand jury.
R. S., s. 809.

SEC. 283. From the persons summoned and accepted as grand jurors, the court shall appoint the foreman, who shall have power to administer oaths and affirmations to witnesses appearing before the grand jury. (*36 Stat. L., 1165.*)

This section made no change in the law.

"The court may, in its discretion, excuse the foreman or any member of a grand jury from further service, without invalidating the jury." U. S. *v.* Belvin, 46 Fed., 381, 385.

Grand juries; when summoned.
R. S., s. 810.
28 Mar., 1910, 36 Stat. L., 267, c. 134.

SEC. 284. No grand jury shall be summoned to attend any district court unless the judge thereof, in his own discretion or upon a notification by the district attorney that such jury will be needed, orders a venire to issue therefor. If the United States attorney for any district which has a city or borough containing at least three hundred thousand inhabitants shall certify in writing to the district judge, or the senior district judge of the district, that the exigencies of the public service require it, the judge may, in his discretion, also order a venire to issue for a second grand jury. And said court may in term order a grand jury to be summoned at such time, and to serve

such time as it may direct, whenever, in its judgment, it may be proper to do so. But nothing herein shall operate to extend beyond the time permitted by law the imprisonment before indictment found of a person accused of a crime or offense, or the time during which a person so accused may be held under recognizance before indictment found. (*36 Stat. L., 1165.*)

The only change in this section is the omission of reference to the circuit courts, as those courts are abolished by section 289 of this Code.

As to the purpose of this section, see U. S. *v.* Antz, 16 Fed., 119. That this section authorizes the judge to summon a grand jury at any term, regular or special, and at any time in the term, see McDowell *v.* U. S., 159 U. S., 602.

Discharge of grand juries.

R. S., s. 811.

SEC. 285. The district courts, the district courts of the Territories, and the supreme court of the District of Columbia may discharge their grand juries whenever they deem a continuance of the sessions of such juries unnecessary. (*36 Stat. L., 1166.*)

For the reasons given in the note to section 284 reference to circuit courts is omitted. The law was not otherwise changed.

Jurors not to serve more than once a year.

R. S., s. 812.
30 June, 1879, 21 Stat. L., 44, c. 52, s. 2; 1 Supp., 270.

SEC. 286. No person shall serve as a petit juror in any district court more than one term in a year; and it shall be sufficient cause of challenge to any juror called to be sworn in any cause that he has been summoned and attended said court as a juror at any term of said court held within one year prior to the time of such challenge. (*36 Stat. L., 1166.*)

The words "circuit or" before the word "district" are omitted. The effect of the amendment of section 2 of the act of June 30, 1879, was to reduce from two years to one year the period in which a person could not again be summoned as a juror, which amendment is carried into the section.

That this provision is exclusive of any State statute or rule, see Morris *v.* U. S., 161 Fed., 672, 168 Fed., 682. The section was held to be inapplicable to the District of Columbia in U. S. *v.* Nardello, 4 Mackey (D. C.), 503. That prior service is only a ground for challenge, see U. S. *v.* Reeves, 3 Woods, 199. See also Boyertown Nat. Bank *v.* Schufelt, 145 Fed., 509.

Challenges.

R. S., ss. 819, 4303.

SEC. 287. When the offense charged is treason or a capital offense, the defendant shall be entitled to twenty and the United States to six peremptory challenges. On the trial of any other felony, the defendant shall be entitled to ten and the United States to six peremptory challenges; and in all other cases, civil and criminal, each party shall be entitled to three peremptory challenges; and in all cases where there are several defendants or several plaintiffs, the parties on each side shall be deemed a single party for the purposes of all challenges under this section. All challenges, whether to the array or panel, or to individual jurors for cause or favor, shall be tried by the court without the aid of triers. (*36 Stat. L., 1166.*)

Formerly, in trials for treason, or for a capital offense, the defendant was entitled to 20 peremptory challenges and the United States to 5. This number on the part of the Government has been increased to 6. In felonies the defendant was entitled to 10 such challenges and the Government but 3. This has also been increased to 6. Not infrequently a challenge for cause by the Government fails, notwithstanding the prosecutor is satisfied the person called is hostile to the Government. After having failed in his challenge for cause, the prosecutor is compelled to exercise his right of peremptory challenge in order to get rid of a hostile juror. With but 3 such challenges, at times the Government is greatly handicapped in the selection of a jury, the result too frequently being the usual "eleven stubborn jurors." This increase will afford the Government the opportunity of exercising more freely the right of peremptory challenge, when it is deemed necessary. In misdemeanors, and in civil cases, each party was entitled to 3 such challenges, and as to cases of that character no change is made.

As to the effect of consolidation of civil actions, see Conn. Mut. Life Ins. Co. *v.* Hillmon, 188 U. S., 208. That several persons jointly indicted are considered as one person and entitled to only twenty challenges, see U. S. *v.* Hall, 44 Fed., 883. As to the consolidation of several indictments which might have been included in one indictment as separate counts, see Krause *v.* U. S., 147 Fed., 442. That "any other felony" is intended to designate offenses other

than capital, see U. S. *v.* Coppersmith, 4 Fed., 198. Challenge for favor, see Press Pub. Co. *v.* McDonald, 73 Fed., 440. For having formed an opinion, see Reynolds *v.* U. S., 98 U. S., 145. When the peremptory challenge should be made, see St. Clair *v.* U. S., 154 U. S., 148.

Persons disqualified for service on jury in prosecution for polygamy, etc.

22 Mar., 1882, 22 Stat. L., 31, c. 47, s. 5; 1 Supp., 332.

SEC. 288. In any prosecution for bigamy, polygamy, or unlawful cohabitation, under any statute of the United States, it shall be a sufficient cause of challenge to any person drawn or summoned as a juror or talesman—

First, that he is or has been living in the practice of bigamy, polygamy, or unlawful cohabitation with more than one woman, or that he is or has been guilty of an offense punishable either by sections one or three of an Act entitled "An Act to amend section fifty-three hundred and fifty-two of the Revised Statutes of the United States, in reference to bigamy, and for other purposes," approved March twenty-second, eighteen hundred and eighty-two, or by section fifty-three hundred and fifty-two of the Revised Statutes of the United States, or the Act of July first, eighteen hundred and sixty-two, entitled "An Act to punish and prevent the practice of polygamy in the Territories of the United States and other places, and disapproving and annulling certain Acts of the legislative assembly of the Territory of Utah"; or

Second, that he believes it right for a man to have more than one living and undivorced wife at the same time, or to live in the practice of cohabiting with more than one woman.

Any person appearing or offered as a juror or talesman, and challenged on either of the foregoing grounds, may be questioned on his oath as to the existence of any such cause of challenge; and other evidence may be introduced bearing upon the question raised by such challenge; and this question shall be tried by the court.

But as to the first ground of challenge before mentioned, the person challenged shall not be bound to answer if he shall say upon his oath that he declines on the ground that his answer may tend to criminate himself; and if he shall answer as to said first ground, his answer shall not be given in evidence in any criminal prosecution against him for any offense above named; but if he declines to answer on any ground, he shall be rejected as incompetent. (*36 Stat. L., 1166.*)

Except for changes required for purposes of revision, this section states what was existing law.

This section was held to be applicable to grand jurors in Clawson *v.* U. S., 114 U. S., 477.

CHAPTER THIRTEEN.

GENERAL PROVISIONS.

Circuit courts abolished.

SEC. 289. The circuit courts of the United States, upon the taking effect of this Act, shall be, and hereby are, abolished; and thereupon, on said date, the clerks of said courts shall deliver to the clerks of the

district courts of the United States for their respective districts all the journals, dockets, books, files, records, and other books and papers of or belonging to or in any manner connected with said circuit courts; and shall also on said date deliver to the clerks of said district courts all moneys, from whatever source received, then remaining in the hands or under their control as clerks of said circuit courts, or received by them by virtue of their said offices. The journals, dockets, books, files, records, and other books and papers so delivered to the clerks of the several district courts shall be and remain a part of the official records of said district courts, and copies thereof, when certified under the hand and seal of the clerk of the district court, shall be received as evidence equally with the originals thereof; and the clerks of the several district courts shall have the same authority to exercise all the powers and to perform all the duties with respect thereto as the clerks of the several circuit courts had prior to the taking effect of this Act. (*36 Stat. L., 1167.*)

Records, etc., and moneys to go to district courts.

Books, etc., to be part of records of district courts.

Powers transferred to district court clerks.

The provisions of this section and the following sections in this chapter are new legislation.

Pending suits continued in district courts.

SEC. 290. All suits and proceedings pending in said circuit courts on the date of the taking effect of this Act, whether originally brought therein or certified thereto from the district courts, shall thereupon and thereafter be proceeded with and disposed of in the district courts in the same manner and with the same effect as if originally begun therein, the record thereof being entered in the records of the circuit courts so transferred as above provided. (*36 Stat. L., 1167.*)

Circuit court's powers conferred upon district courts.

SEC. 291. Wherever, in any law not embraced within this Act, any reference is made to, or any power or duty is conferred or imposed upon, the circuit courts, such reference shall, upon the taking effect of this Act, be deemed and held to refer to, and to confer such power and impose such duty upon, the district courts. (*36 Stat. L., 1167.*)

References to laws revised in this act.

SEC. 292. Wherever, in any law not contained within this Act, a reference is made to any law revised or embraced herein, such reference, upon the taking effect hereof, shall be construed to refer to the section of this Act into which has been carried or revised the provision of law to which reference is so made. (*36 Stat. L., 1167.*)

Construction of words, etc.

SEC. 293. The provisions of sections one to five, both inclusive, of the Revised Statutes, shall apply to and govern the construction of the provisions of this Act. The words "this title," wherever they occur herein, shall be construed to mean this Act. (*36 Stat. L., 1167.*)

Existing laws continued.

SEC. 294. The provisions of this Act, so far as they are substantially the same as existing statutes, shall be construed as continuations thereof, and not as new enactments, and there shall be no implication of a change of intent by reason of a change of words in such statute, unless such change of intent shall be clearly manifest. (*36 Stat. L., 1167.*)

Legislative construction not to be presumed.

SEC. 295. The arrangement and classification of the several sections of this Act have been made for the purpose of a more convenient and orderly arrangement of the same, and therefore no inference or presumption of a legislative construction is to be drawn by reason of the chapter under which any particular section is placed. (*36 Stat. L., 1167.*)

SEC. 296. This Act may be designated and cited as "The Judicial Code." (*36 Stat. L., 1168.*)

CHAPTER FOURTEEN.

REPEALING PROVISIONS.

SEC. 297. The following sections of the Revised Statutes and Acts and parts of Acts are hereby repealed:

Sections five hundred and thirty to five hundred and sixty, both inclusive; sections five hundred and sixty-two to five hundred and sixty-four, both inclusive; sections five hundred and sixty-seven to six hundred and twenty-seven, both inclusive; sections six hundred and twenty-nine to six hundred and forty-seven, both inclusive; sections six hundred and fifty to six hundred and ninety-seven, both inclusive; section six hundred and ninety-nine; sections seven hundred and two to seven hundred and fourteen, both inclusive; sections seven hundred and sixteen to seven hundred and twenty, both inclusive; section seven hundred and twenty-three; sections seven hundred and twenty-five to seven hundred and forty-nine, both inclusive; sections eight hundred to eight hundred and twenty-two, both inclusive; sections ten hundred and forty-nine to ten hundred and eighty-eight, both inclusive; sections ten hundred and ninety-one to ten hundred and ninety-three, both inclusive, of the Revised Statutes.

"An Act to determine the jurisdiction of circuit courts of the United States and to regulate the removal of causes from State courts, and for other purposes," approved March third, eighteen hundred and seventy-five.

Section five of an Act entitled "An Act to amend section fifty-three hundred and fifty-two of the Revised Statutes of the United States, in reference to bigamy, and for other purposes," approved March twenty-second, eighteen hundred and eighty-two; but sections six, seven, and eight of said Act, and sections one, two, and twenty-six of an Act entitled "An Act to amend an Act entitled 'An Act to amend section fifty-three hundred and fifty-two of the Revised Statutes of the United States, in reference to bigamy, and for other purposes,' approved March twenty-second, eighteen hundred and eighty-two," approved March third, eighteen hundred and eighty-seven, are hereby continued in force.

"An Act to afford assistance and relief to Congress and the executive departments in the investigation of claims and demands against the Government," approved March third, eighteen hundred and eighty-three.

"An Act regulating appeals from the supreme court of the District of Columbia and the supreme courts of the several Territories," approved March third, eighteen hundred and eighty-five.

"An act to provide for the bringing of suits against the Government of the United States," approved March third, eighteen hundred and eighty-seven, except sections four, five, six, seven, and ten thereof.

Sections one, two, three, four, six, and seven of an Act entitled "An Act to correct the enrollment of an Act approved March third, eighteen hundred and eighty-seven, entitled 'An Act to amend sections one, two, three, and ten of an Act to determine the jurisdiction of the circuit courts of the United States, and to regulate the removal

of causes from State courts, and for other purposes,' approved March third, eighteen hundred and seventy-five," approved August thirteenth, eighteen hundred and eighty-eight.

"An Act to withdraw from the Supreme Court jurisdiction of criminal cases not capital and confer the same on the circuit courts of appeals," approved January twentieth, eighteen hundred and ninety-seven.

"An Act to amend sections one and two of the Act of March third, eighteen hundred and eighty-seven, Twenty-fourth Statutes at Large, chapter three hundred and fifty-nine," approved June twenty-seventh, eighteen hundred and ninety-eight.

"An Act to amend the seventh section of the Act entitled 'An Act to establish circuit courts of appeals and to define and regulate in certain cases the jurisdiction of the courts of the United States, and for other purposes,' approved March third, eighteen hundred and ninety-one, and the several Acts amendatory thereto," approved April fourteenth, nineteen hundred and six.

All Acts and parts of Acts authorizing the appointment of United States circuit or district judges, or creating or changing judicial circuits, or judicial districts or divisions thereof, or fixing or changing the times or places of holding court therein, enacted prior to February first, nineteen hundred and eleven.

Sections, one, two, three, four, five, the first paragraph of section six, and section seventeen of an Act entitled "An Act to create a commerce court, and to amend an Act entitled 'An Act to regulate commerce,' approved February fourth, eighteen hundred and eighty-seven, as heretofore amended, and for other purposes," approved June eighteenth, nineteen hundred and ten.

Also all other Acts and parts of Acts, in so far as they are embraced within and superseded by this Act, are hereby repealed; the remaining portions thereof to be and remain in force with the same effect and to the same extent as if this Act had not been passed. (*36 Stat. L., 1168.*)

See table of sections of the Revised Statutes covered by this Code at the beginning of this volume.

Effect on tenure of office of present incumbents.

SEC. 298. The repeal of existing laws providing for the appointment of judges and other officers mentioned in this Act, or affecting the organization of the courts, shall not be construed to affect the tenure of office of the incumbents (except the office be abolished), but they shall continue to hold their respective offices during the terms for which appointed, unless removed as provided by law; nor (except the office be abolished) shall such repeal affect the salary or fees or compensation of any officer or person holding office or position by virtue of any law. (*36 Stat. L., 1169.*)

Accrued rights and pending suits not affected.

SEC. 299. The repeal of existing laws, or the amendments thereof, embraced in this Act, shall not affect any act done, or any right accruing or accrued, or any suit or proceeding, including those pending on writ of error, appeal, certificate, or writ of certiorari, in any appellate court referred to or included within, the provisions of this Act, pending at the time of the taking effect of this Act, but all such suits and proceedings, and suits and proceedings for causes arising or acts done prior to such date, may be commenced and prosecuted within the same time, and with the same effect, as if said repeal or amendments had not been made. (*36 Stat. L., 1169.*)

In Washington Home for Incurables *v.* American Security and Trust Co., 224 U. S., 486, it was held that this section did not give the right of appeal from judgments of the Court of Appeals of the District of Columbia in cases covered by the statutes repealed by the Judicial Code and in which the cause of action occurred prior to January 1, 1912, but which were not decided by the court of appeals until after that date. In that case Mr. Justice Holmes said

that the "act saves jurisdiction when an appeal has been taken, but does not save an appeal for all suits in causes of action accrued before this year."

A case properly removed to the circuit court before this code took effect should not be remanded because it appeared in the district court that less than the jurisdictional amount was involved, the jurisdiction of the circuit court being saved by this section. Lincoln *v.* Robinson et al., 194 Fed., 571. On the construction of the words "with the same effect," see Taylor *v.* Midland Valley R. Co., 197 Fed., 323. See also In re Steiner, 195 Fed., 299.

Prosecution of prior offenses, etc.

SEC. 300. All offenses committed, and all penalties, forfeitures, or liabilities incurred prior to the taking effect hereof, under any law embraced in, amended, or repealed by this Act, may be prosecuted and punished, or sued for and recovered, in the district courts, in the same manner and with the same effect as if this Act had not been passed. (*36 Stat. L., 1169.*)

Under this section the district court is authorized to punish a contempt committed in a circuit court before that court was abolished. In re Steiner, 195 Fed., 299.

SEC. 301. This Act shall take effect and be in force on and after January first, nineteen hundred and twelve. (*36 Stat. L., 1169.*)

Approved March 3, 1911.

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